

D-Coat GmbH General Terms and Conditions

I. General

1. The following terms and conditions are binding for all our offers, deliveries and services, including our provision of information, consultation or other services. Other general conditions that might be applied by our customers only apply in our contractual dealings with one another if we have expressly agreed to them in writing.
2. Any and all agreements and/or legally binding declarations apply only after written confirmation from both parties.
3. Our General Terms and Conditions shall also be valid for all future contractual dealings with the customer.

II. Offer, Placement of Order, Conclusion of Contract

1. Unless expressly indicated otherwise, any pre-contractual communications – in particular offers, descriptions, and drawings or technical documents – are to be considered non-binding and non-obligatory. Unless expressly denoted in writing as a binding agreement, descriptions and information provided in brochures, catalogues and electronic media shall be considered as no more than a means of providing the customer with information and general knowledge about our products. Verbal ancillary agreements are only binding if they have been confirmed in writing.
2. When an order is placed, the customer must provide us in writing with all of the relevant information necessary to carry out the order, including but not limited to a description of the article to be coated, quantity, parameters, composition of the article to be coated or its respective number, pre-treatments (where applicable), and specifications involving both the coat itself and the surface to be coated.
This includes specifications and special demands involving storage of the material to be coated. If the placed order deviates in any way from that described in D-Coat GmbH's written offer, these will not be regarded as agreed without subsequent express written confirmation.
3. D-Coat GmbH must be informed of any changes to the composition of materials in advance.
4. Our confirmation of order constitutes the criterion for the content and scope of the contract. The services we will provide are defined in the concluded contract. Any service that is not defined in the confirmation of the order shall be charged separately. The customer will be informed of the additional charges in advance.
5. Upon delivery of the goods for coating, the customer is to fill out an accompanying form (delivery receipt) describing the number of items being delivered, a description of them, and their value.
6. The delivered goods must be in a state suitable for coating. We reserve the right to return goods that don't fulfill this prerequisite to the customer at the customer's expense.
7. The customer must provide a clear means of identification of ownership on the goods. The customer bears the risk if a mistake in delivery is made due to a lack of clear identification of ownership on items submitted for coating.
8. Goods delivered by the customer will be visually inspected for external integrity and compared to the quantity submitted in the accompanying form (delivery receipt). There are no further requirements for inspection of delivered goods unless such are agreed expressly in advance.

III. Prices – Terms of Payment

1. In the absence of any provisions to the contrary contained in the agreement, our prices are valid 'ex works'. The customer shall bear all additional costs – notably freight costs, packing costs, related expenses, public fees and tax charges – which are required in excess of standard packing requirements.
2. We reserve the right to adjust our prices if cost increases or reductions occur, even after conclusion of the contract, especially due to changes in the price of either materials or energy. Proof of such changes will be provided for the customer on request.
3. Statutory sales taxes are not included in our prices; these are posted separately on bills at the amount required by law on the day of billing.
4. Unless otherwise expressly agreed in the contract, the invoice amount is due net (without deductions) within 30 days of invoice date. Customers who pay within 10 days of the invoice date receive a 2% discount. The date of payment is deemed to be the day on which full payment enters the D-Coat GmbH account. The purchaser assumes all risks involving method of payment.
5. Customers are only entitled to make set-off claims if these have legal validity, are uncontested or are recognized by us. The client can claim a right of retention only for claims arising from the same contract, and only if the customer's claim has been accepted, is undisputed or has been determined by a court judgment.
6. Notwithstanding D-Coat GmbH's other statutory rights, D-Coat GmbH shall have a right of retention for individual deliveries if at any time the customer is in arrears for payments for products or services rendered. In addition, we reserve the right to an assertion of rights according to Art. 321 BGB of the German Civil Code (Objections Due to Uncertainty).
7. If outstanding payments are not paid by the agreed deadline, the customer shall be considered in default even without a reminder. In cases of default, D-Coat GmbH shall be entitled – subject to further claims – to charge a late payment fee of 8% more than the p.a. base lending rate.
8. D-Coat GmbH reserves the right to invoice the customer for additional charges or services when:

- the type or magnitude of the services described in original contract are changed at the customer's request
- there are differences between the material to be coated or its workmanship and the description, information and/or documentation submitted of the goods by the customer, or if these were incomplete.
If such additional services become necessary (i.e. in particular for pre- and post-treatment steps or for the construction of special mounts) D-Coat GmbH will inform the customer of the additional necessary costs before beginning the coating process.

IV. Delivery time, Transfer of Risk

1. To be legally binding, delivery deadlines or periods must be explicitly agreed in writing.
2. The agreed delivery times begin only after the clarification of all technical and administrative questions addressed in the contract 'diamond coating systems' (page 2 of 3), and are also dependent on the timely and orderly fulfillment of the customer's contractual obligations. D-Coat GmbH reserves the right to plea non-fulfillment of the contract.
3. The delivery times will be considered adhered to when the customer has been notified of readiness for delivery, but the goods cannot be sent by the appropriate deadline due to customer request(s).
4. If by reason of circumstances for which D-Coat GmbH is not responsible, or does not receive deliveries or services from third parties, or receives late or incorrect or deliveries or services from said parties, or if prevented by events of force majeure, then D-Coat GmbH shall be allowed to postpone the delivery and/or the service as long as the obstruction exists plus a reasonable start-up period, or to withdraw from the contract wholly or in part. Events of force majeure include strikes, lockouts and disruptions in production due to fire, mechanical breakdowns, or scarcities of raw materials or energy, as well as unforeseeable official measures or the inability to obtain official certifications and approvals (for example export licenses), even when these circumstances occur in connection with third parties, or other unforeseen circumstances beyond the D-Coat GmbH's control. The above provisions shall also apply if the described circumstances occur at a time when D-Coat GmbH was already in default. We shall inform the customer without delay about any circumstances that could lead to a late delivery.
5. If a binding delivery date has passed due to the circumstances described in Paragraph IV of these General Terms and Conditions, the customer can require D-Coat GmbH to decide either to withdraw from the contract, or to deliver the goods or services within a reasonable extension of time. If D-Coat GmbH does not inform the customer about the following steps it will take to fulfill its obligations, the customer shall be allowed to withdraw from any unfulfilled parts of the contract.
6. If a binding date of delivery has not been agreed, the customer may call upon us in writing two weeks after D-Coat GmbH has exceeded a non-binding delivery date to deliver ordered goods and services within a reasonable period of time. The goods and services then become due on that agreed date.
7. D-Coat GmbH shall be entitled to partial performance or delivery at any time, unless said performance or delivery is unreasonable for the customer.
8. Claims for damages of any type resulting from a delay in or the non-performance of delivery are excluded, with the exception of circumstances described in Paragraph VII (Legal Liability). D-Coat GmbH cannot be declared in default of a specific contract if the customer has not fulfilled obligations to us, including those from other, separate contracts.
9. Unless otherwise contractually agreed, our orders are delivered 'ex works'.
10. Risk is transferred to the customer as soon as the delivery or partial delivery has been handed over to the transport carrier or as soon as the delivery or partial delivery has left our dispatch department. If dispatch is delayed at the customer's request or for other reasons attributable to the customer, the risk shall pass to the customer upon our notification of readiness for shipment.

V. Reservation of Proprietary Rights and Right of Retention

1. D-Coat GmbH retains all proprietary rights for materials, components and auxiliary materials until the complete settlement of all existing claims arising from the contractual connection with the customer.
2. If there is an undue delay in payment, D-Coat GmbH reserves the right to ownership to all goods - in both the contract in question or those goods submitted in subsequent contracts - that are still in our possession, until full payment has been received by D-Coat GmbH.
3. The customer bears all risks involving damage or loss of the thus retained goods. D-Coat GmbH is not required to insure goods retained for this reason.

VI. Warranty Claims

1. D-Coat GmbH provides a warranty for defects until the transfer of risk takes place, unless said defect(s) derive from a circumstance that can be assigned to the customer's professional or commercial activity.
2. Customer warranty claims are made null and void if the customer or a third party undertakes to alter the goods without the prior written consent of D-Coat GmbH, or when said goods are used or processed further in any way in spite of claimed defects.
3. Warranty claims also become null and void :
 - for all damages and differences that are due to missing, incorrect, incomplete or inexact information provided by the customer at the time the contract was granted
 - for damages that can be shown to stem from nonconformance with agreed workmanship requirements, for example those due to material defects, dimensional variations, machining residues or other foreign particles, manufacturing faults, residuals that cannot be removed, etc. However, this shall apply only to cases where the unsuitability of the goods for coating is not immediately apparent.

4. If not expressly agreed to the contrary, D-Coat GmbH in particular assumes no responsibility for goods subsequently used for purposes other than those for which the uncoated object would be normally suitable, or that do not meet customer expectations for such uses.

5. In fulfilling warranty requirements, D-Coat GmbH reserves the right to rectify defects at our discretion, as well as the choice of whether to repair or to replace the defective goods. In the process of fulfilling warranty requirements, D-Coat GmbH shall bear all expenses necessary for this purpose, including transport, travel, labor and materials costs, unless these are increased by the goods having to be transported to a place other than the original shipping destination. If a repair of the goods is deemed impossible for technical reasons or is judged to have failed, the customer shall only be entitled to a reduction in price for services rendered. Withdrawal from the contract is only allowed in situations where D-Coat GmbH is adjudged to be answerable for substantial damages. In cases involving warranty on partial deliveries, such withdrawal from the contract in question shall only apply to parts included in said partial delivery if adherence to the overall contract is not adjudged unreasonable. With the exception of the liabilities listed in Paragraph VIII, all other liability of any kind on the part of D-Coat GmbH is excluded.

6. All customer warranty claims assume that the delivered goods have been examined and the claims verified promptly and correctly according to Article 317 of the HGB [German Commercial Code]. Claims for obvious defects must be made in writing within three days of delivery. Claims involving hidden defects must be made immediately after detection of such in writing. Claims involving defects must be asserted within one year of the date of the transfer of risk to the customer.

7. If no other agreement has been made with the customer, up to 5 sub-standard parts per 100 delivered parts (customary deviations agreement) is intrinsic in D-Coat GmbH's price calculation, and this shall not constitute grounds for warranty claims. If the customer desires, such sub-standard or customary deviations can also be included in goods delivery.

8. If warranty claims involving coated tools or parts are invoked, D-Coat GmbH's liability for defects that is described in "diamond coating systems" (page 3 of 3) are no longer applicable. In cases of doubt, the customer must prove that the part in question shows abnormal wear.

9. Before the coated goods are sent, D-Coat GmbH will perform the customary quality control of outgoing goods. If the customer requires further inspections, such must be agreed in writing and paid separately by the customer. Coated goods that are detected as defective on a functional surface during quality control will be removed from the delivery. No coating costs will be invoiced for such goods.

VII. Legal Liability

1. D-Coat GmbH's assumption of responsibility and/or guarantee is limited to that described in Paragraph VI. Our liability is excluded for any possible infringements of protective rights that are encountered in the application of the coated goods in industrial processes and/or operating conditions, as well as for any other connection with other products that use of the coated goods might cause.

2. If the combination of coating-coated goods violates trademark or patent rights of third parties, D-Coat GmbH shall only be held liable if said violation of trademark or patent rights was or could have been clearly recognisable as such by us based on the information shared by the customer at contact closure.

3. In addition to the provisions listed in Paragraph VI, D-Coat GmbH reserves the right of choice in cases of legal infringements to:

- acquire the necessary license(s) to remove the legal infringement
- remove the infringement by coating the item/goods in a different but equivalent coating, if such is adjudged a reasonable alternative for the customer

4. Subject to Paragraph VII, all other liability claims of any kind are excluded.

5. It is the customer's responsibility to ensure that D-Coat GmbH is notified in writing immediately about any claims asserted by third parties, as well as any defense of claims and settlement negotiations.

VIII. General Liability

1. The customer shall not be allowed to make any claims not expressly conceded in these General Terms and Conditions, in particular warranty claims or other claims for compensation such as those arising from non-contractual liability (with the exception of claims arising from Art. 1.4 of the German Product Liability Act (ProdHaftG)) including compensation for damages from non-contractual claims or any other rights due to eventual disadvantages that are related to D-Coat GmbH's contract performance. This general disclaimer of liability does not apply to cases of a liability due to the product liability legislation for death, bodily injury and damage to the health of persons, and/or premeditated or grossly negligent fault on the part of D-Coat GmbH. D-Coat GmbH can only be adjudged to be liable if we are in culpable violation of one or more of these essential obligations. In cases of adjudged breach of a cardinal or primary contractual duty, D-Coat GmbH's liability shall be limited to those damages that can be reasonably foreseen at the conclusion of such contracts. The customer is obligated to inform D-Coat GmbH in writing of any particular risks, atypical possibilities of damage, and unusual possible amounts of damage before the contract is concluded.

2. Insofar as our liability is excluded or limited by the conditions set down in the above paragraphs, the customer is required to exempt D-Coat GmbH from all claims by third parties on first demand

IX. Nondisclosure

1. The customer agrees not to disclose to any third party any documentation (including prototypes and samples, models or like data) or other information either during the period of the contractual agreement or after it ends. The customer also agrees that insofar as such information or data is not necessary to achieve the purpose of the contractual agreement between D-Coat

GmbH and the customer, such documentation or information shall not be recorded or copied, passed on to third parties or used in any other way.

2. D-Coat GmbH reserves all rights to drawings and technical documents that have been handed over to the customer. Such drawings and technical documents may not be made available to third parties (in part or in whole), nor used outside the contractually specified purpose, without the express and prior written consent of D-Coat GmbH.

X. Jurisdiction and Legal Venue

1. The laws of the Federal Republic of Germany apply for all legal relationships of the contracting parties excluding those involving the United Nations Convention on Contracts for the International Sale of Goods (CISG). The legal venue and place of jurisdiction for all disputes arising from the contract relationship is Erkelenz, Germany.

2. D-Coat GmbH however reserves the right to file legal action against the customer at any other permissible legal venue of its choice.

3. If for any reason any provision of these General Terms and Conditions, or any portion thereof, should prove to be unenforceable, the remainder of these General Terms and Conditions will continue in full force and effect. In this case, the customer is obligated to agree to a new provision replacing the unenforceable one, which resembles the original in its intent. The same rule shall apply for any unforeseen omissions in these General Terms and Conditions.

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