

TERMS AND CONDITIONS OF SALE

1. **SCOPE:** As used herein, “AkzoNobel” means the AkzoNobel entity identified above; “Buyer” means the purchaser of Products from AkzoNobel and “Products” means any and all goods sold by AkzoNobel to Buyer. Unless a detailed product sales agreement is in place between AkzoNobel and Buyer covering the sale of the Products, all Products sold or otherwise provided by AkzoNobel are sold or provided exclusively on the basis of these Terms and Conditions of Sale. No differing or supplemental terms or conditions shall be applicable unless expressly agreed to by AkzoNobel in writing.
2. **OFFER / ACCEPTANCE:** A quotation from AkzoNobel does not constitute an offer but an invitation to Buyer to make an offer. In all cases Buyer’s offer shall be deemed based on these Terms and Conditions of Sale. An agreement comes into effect only when AkzoNobel accepts Buyer’s offer.
3. **DELIVERY / TRANSFER OF RISK:** Delivery terms shall be interpreted in accordance with the latest INCOTERMS valid at the date the order is accepted. Unless otherwise agreed to by AkzoNobel in writing the delivery term is EXW and risk of loss in the Products will transfer to Buyer upon tender of the Products to Buyer or the carrier at AkzoNobel’s shipping facility.
4. **QUANTITY VARIATIONS:** Buyer will pay for the quantity delivered and may not reject any delivery of Product on the grounds of variation of quantity where such variation is not more than 10% of the quantity ordered.
5. **PRICE AND PAYMENT:** Unless otherwise agreed by the Parties, the price for the Products will be the price quoted by AkzoNobel. All prices quoted by AkzoNobel are exclusive of value added tax and any other tax that may apply in respect of the Products. AkzoNobel will issue invoices to Buyer for all Products sold to Buyer. Buyer shall pay these invoices within 30 days from the invoice date in the currency indicated on the invoice at the address of AkzoNobel indicated on the invoice. Buyer may not withhold payment of any amount due to AkzoNobel because of any set-off, counter-claim, abatement or similar deduction. Upon demand Buyer will immediately reimburse AkzoNobel for any and all costs including fees for collection agencies and attorneys incurred or expended by AkzoNobel to collect any amounts due from Buyer.
6. **RETENTION OF TITLE:** AkzoNobel retains a security interest in all Products delivered to Buyer to secure payment in full of all amounts due to AkzoNobel and Buyer shall, upon AkzoNobel’s request, execute such documentation as AkzoNobel deems necessary to perfect or maintain its security interest in the Products. Title to the Products passes to Buyer (subject to AkzoNobel’s security interest) at the time risk of loss passes to Buyer. Buyer may sell the Products in the ordinary course of its business, but may not pledge, mortgage or otherwise encumber the Products prior to payment in full of the purchase price.
7. **WARRANTY / BUYER’S RIGHTS:** AkzoNobel warrants to Buyer that at the time of transfer of risk of loss the Products conform to AkzoNobel’s standard Product specifications or such other specifications as AkzoNobel and Buyer have expressly agreed to in writing (the “Specifications”). **THIS WARRANTY IS THE SOLE WARRANTY GIVEN BY AKZONOBEL. AKZONOBEL MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, THE APPLICATION OR USE THEREOF, OR OTHERWISE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, EACH OF WHICH IS SPECIFICALLY DISCLAIMED.** In the event Products do not comply with the foregoing warranty, AkzoNobel will, at its option, repair or replace such Products or refund the Price of the Products and, having done so, will have no further liability. Buyer must notify AkzoNobel of any claim Products do not comply with the foregoing warranty within seven (7) days after Buyer becomes aware of such claim but in no event later than thirty (30) days after delivery of the Product to Buyer. Buyer’s failure to notify AkzoNobel of any such claim within the time set out in the preceding sentence will constitute a waiver by Buyer of such claim. AkzoNobel makes no warranty of any kind with respect to any services provided to Buyer and shall have no liability with respect to such services.
8. **LIMITATION OF LIABILITY:** AkzoNobel will not be liable for any loss or damage caused by Buyer’s failure to exercise effective quality control or the failure to store, use or otherwise handle the Products as advised or in accordance with instructions provided by AkzoNobel or industry standards. **AKZONOBEL WILL NOT BE LIABLE TO BUYER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY OR OTHERWISE FOR ANY LOSS OF PROFIT, LOSS OF BUSINESS, DIMINUTION IN VALUE, OR DEPLETION OF GOODWILL OR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL LOSS OR DAMAGE. AKZONOBEL’S AGGREGATE LIABILITY TO BUYER IN RESPECT OF ALL LOSSES ARISING UNDER OR IN CONNECTION WITH THE SUPPLY OF PRODUCTS WILL IN NO WAY EXCEED THE PRICE OF THE PRODUCTS PURCHASED, OR €200,000, WHICHEVER IS LOWER.** Nothing in this section will limit or exclude AkzoNobel’s liability for any matter in respect of which it is unlawful for AkzoNobel to exclude or restrict its liability.
9. **FORCE MAJEURE:** AkzoNobel will not be liable in any respect for failure to perform its obligations if hindered or prevented, directly or indirectly by war (declared or undeclared), national emergency, inadequate transportation facilities, machinery or equipment failure, AkzoNobel’s inability to secure materials, supplies, fuel or power for the manufacture of Product on terms and conditions that are acceptable to AkzoNobel, fire, flood, windstorm or other act of God, strike, lockout or other labour dispute, order or act of any government, whether foreign, national or local, whether valid or invalid, or any other cause of like or different kind beyond the reasonable control of AkzoNobel (each a “Force Majeure”). AkzoNobel shall have no obligation to procure any Products from other sources and may allocate its available supply of Products among the members of the AkzoNobel Group (including itself) and their customers, buyers, distributors and resellers on whatever basis AkzoNobel may deem fair and practical. In the event that the duration of a Force Majeure exceeds six (6) months or is reasonably expected to exceed 6 months, AkzoNobel is entitled to withdraw from any obligation it may have to supply the Products to Buyer without the Buyer having any right to compensation.
10. **EXPORT CONTROL AND ECONOMIC SANCTIONS:** Buyer will not sell, export, re-export, license, transmit, divert or otherwise transfer, directly or indirectly, any Product or any information or technology related to the Product except in accordance with applicable laws and regulations, including without limitation applicable UN, US and EU export control and economic sanctions laws and regulations and the laws and regulations of the country where Buyer is resident. Buyer acknowledges that it will (i) take all steps necessary to comply with the above laws and regulations, including obtaining export and other licenses if necessary and (ii) not take any actions that would cause AkzoNobel to be in violation of the above laws.
11. **TERMINATION:** An agreement with Buyer to deliver Products on the basis of these Terms and Conditions will not oblige AkzoNobel for the future to take further orders. AkzoNobel will at all times be entitled to end the relationship. Such termination will never entitle Buyer to compensation.
12. **LAW AND DISPUTE RESOLUTION.** These Terms and Conditions and all disputes between AkzoNobel and Buyer are governed by the laws of the country and, if applicable, state or province, in which AkzoNobel’s address is located, excluding the United Nations Convention of Contracts for the International Sale of Goods and any choice of law rules that direct the application of the law of any other jurisdiction. Any dispute between AkzoNobel and Buyer that the parties are unable to resolve by agreement will be resolved exclusively in the courts having jurisdiction over the subject matter of the dispute located in the city in which AkzoNobel’s address is located (or if no such courts exist in such city in such courts as are located closest to such city) and those courts having appellate level review over the decisions and rulings of such courts. Each party consents and agrees to the jurisdiction and venue of such courts.