

# General Coating Conditions of Nanogate Schwäbisch Gmünd GmbH, Schwäbisch Gmünd

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## Section 1 General scope of application

(1)  
The following General Coating Conditions ("GCC") apply to all our present and future business relations with our contractual partners ("customers") insofar as they relate solely to the coating or surface enhancement of workpieces provided to us directly or indirectly by our customers or procured by us to the customer's specifications.

(2)  
Our General Conditions of Supply and Sale, which vary in some aspects, apply to cases in which we sell and/or supply movable items (with or without coating or surface enhancement) that we have made ourselves or purchased from suppliers.

(3)  
Even if we are aware of them, any of the customer's terms and conditions that are in opposition to or differ from these conditions shall not become part of the contract, unless we have explicitly approved their application. This need for approval applies in all cases, so also if we supply goods to the customer without reservation and with knowledge of the customer's opposing or differing terms and conditions.

(4)  
To be valid, any agreements that differ from the following GCC and any contractual amendments must be in the form of a written contract or must be confirmed by us, at least in text form (Section 126b of the German Civil Code (BGB)).

## Section 2 Offers, offer documents

(1)  
Our offers are non-binding and subject to change unless they are explicitly described as binding or contain a particular deadline for acceptance. Offers made by phone or orally must be confirmed by us in text form to be valid. A contract only comes about when we confirm the order in text form or carry out the work.

(2)  
We reserve title and copyright to all illustrations, drawings, costings and other documents. This also applies to written documents described as "confidential." Customers also require our explicit written approval before forwarding them to third parties.

## Section 3 Transfer of workpieces, incoming goods

(1)  
The risk that workpieces supplied by the customer or purchased by us to the customer's specifications are not suitable for the coating/surface enhancement that has been ordered lies solely with the customer, unless we are guilty of an intentional act or gross negligence.

(2)  
The customer must supply the workpieces punctually on the agreed date and in a condition suitable for processing (see Section 10).

(3)  
We are not obliged to carry out a special inspection of the workpieces to be processed, unless we have an explicit written agreement with the customer.

## Section 4 Ownership, liens and retention rights

(1)  
Our processing of the workpieces is always on behalf of the customer. The pieces remain the property of the customer at all times, to the extent that it has acquired title to them.

(2)  
To secure our contractual claims we have a lien over the workpieces and items belonging to the customer that come into our possession on the basis of the contract. The lien also applies to other claims under the business relationship to the extent that they are undisputed or definitively established. This does not affect our statutory lien and right of retention.

## Section 5 Prices, payment terms

(1)  
Unless our offer states otherwise, our prices are "ex works" and do not include packaging costs, which are charged extra. Deliveries to customers only take place when we have been explicitly appointed to do so and are at the customer's risk and expense.

(2)  
Sales tax at the statutory rate must be added to our prices; it will be itemized on the invoice on the invoice date.

(3)  
Any deduction for prompt payment must be agreed in writing.

(4)  
Unless our offer states otherwise, the invoiced amount is payable without deductions within 14 days of the invoice date.

(5)  
The customer may only offset claims of their own if these have been definitively established, are undisputed or acknowledged by us. They may only exercise a right of retention to the extent that the counter-claim is based on the same contractual relationship.

## Section 6 Impossibility of performance

If we cannot perform the service ordered (coating/surface enhancement) on the workpieces for reasons beyond our control, the customer nonetheless owes us reasonable compensation for our time and expenses. In this case we assume no liability for damage to workpieces, breaching secondary contractual obligations and for damages other than to the object of the service itself, except in the event of intentional acts or gross negligence.

## Section 7 Delivery date, delayed delivery

(1)  
Delivery dates and periods are non-binding, unless agreed otherwise when the contract comes into effect or subsequently agreed in text form. The delivery period begins as soon as all export details have been clarified for the order, the customer has given any clearance required for the models used to prepare the delivery and the customer has met all other advance obligations.

(2)  
We are not liable if the delivery becomes impossible or delayed due to force majeure or other events for which we are not responsible and which were unforeseeable at the time the contract took effect (e.g. operating malfunctions of any kind, difficulties in the procurement of materials or power, transport delays, strikes, lock-outs, delays or delivery failures by our suppliers). If the delivery of the product or service is hindered or made impossible by such an event, the delivery period is extended or the delivery date postponed by the duration of the hindrance, plus a reasonable amount of setting-up time. The customer will be notified of the delay or the impossibility of delivery without delay.

(3)  
The time at which the delivery becomes delayed is determined by statutory regulations, but the customer must send us a reminder in all cases. If the delivery of our product or service is delayed, our liability for damages is limited in accordance with Section 11 of the GCC.

## Section 8 Risk, insurance

(1)  
The customer bears the risk of the chance destruction or chance deterioration of the workpieces, regardless of whether the damage occurs during transport or at our factory.

(2)  
There is no separate insurance coverage for the workpieces for the time they are being processed at our factory. The customer must ensure the maintenance of any existing insurance coverage for the workpieces (e.g. for fire, water and storm damage). We will only obtain insurance coverage for these risks at the customer's explicit request and expense.

## Section 9 Acceptance of the processed workpieces

- (1)  
The customer must inspect the workpieces directly when they are delivered and register any objections concerning the scope of delivery, workmanship or quality without delay. Workpieces which have been coated/surface enhanced but not finished by us are deemed to have been accepted as free of defects if the customer does not report quality defects in text form within seven days of delivery. This rule also applies to coatings for which no finishing is required or intended. Workpieces which are finished by the customer or by third parties on its behalf are excluded from all warranties because the processing cannot be verified. If the customer refuses to accept the workpieces because of significant defects, we are entitled to rectify them. The handover and use of the coated/surface enhanced workpieces without objections or payment by the customer are deemed to constitute acceptance.
- (2)  
The customer is responsible for and bears the costs of inspecting and accepting the goods.
- (3)  
If the customer delays acceptance or is in breach of any other cooperation obligations or if our delivery is delayed for other reasons for which the customer is responsible, we are entitled to demand compensation for the ensuing damages, including additional expenses (e.g. warehousing costs). We will charge compensation at a flat rate of 0.5 % of the price net of sales tax (delivery value) for every calendar week of the delay or part thereof, up to a maximum of 5 % of the delivery value of the workpieces that are delivered late or in the case of definitive non-acceptance, up to 10 % of the delivery value of the workpieces that have not been accepted.
- (4)  
This does not affect our right to prove higher damages or our statutory rights; the flat-rate compensation payment is to be offset against our additional monetary claims, however. The customer may prove that we did not incur any damages or that they were significantly lower than the flat-rate sum mentioned above.
- (5)  
If acceptance is delayed, the goods are deemed to have been accepted no later than two weeks after the customer has received notification of completion.

## Section 10 Quality of the workpieces, material defects

- (1)  
For the coatings and surface enhancements carried out by us we guarantee that the contractually agreed performance characteristics are fulfilled and that they correspond to the agreed scope of performance.
- (2)  
Our liability for material defects is based solely on the agreement on the quality of the coating/surface enhancement of the workpieces. The product descriptions serve as the agreement on their quality. These are designated as such and are sent to the customer before the order is placed and included in the contract in the same way as the GCC.
- (3)  
We will rectify material defects which the customer has notified us of in text form. We can only process the defect report, however, if it includes the designation of the pieces, a description of the defect, the quantity, the delivery date and the number of the delivery note. The onus of proof for all qualifying conditions is on the customer. If the customer elects to receive compensation after our rectification attempt has failed, compensation is limited to the value of our coating service (Section 11 (2) to (4) apply accordingly).
- (4)  
In the event of a material defect the customer can demand subsequent performance, whereby we decide within a reasonable period whether to rectify the defect or deliver a new item that is free of defects. Our liability for defects lapses, however, if the customer modifies the workpiece or has it modified by third parties without our consent and this makes it impossible or unreasonably difficult to rectify the defect. In all events the customer bears the additional costs of rectifying the defect caused by the modification.
- (5)  
The customer must give us the time and opportunity necessary for our subsequent performance, and in particular must provide the

defective workpieces for our inspection. If we remake the goods the customer must return the defective workpieces to us in accordance with the statutory regulations. Our subsequent performance does not include either the removal of the defective workpieces or their re-installation if we were not originally obliged to install them.

- (6)  
We bear the expenses necessary for the inspection and subsequent performance, particularly transport, travel, labor and material costs (but not the removal and re-installation costs), if the item is indeed defective. This does not apply to additional costs due to the fact that the workpiece is located somewhere other than the original place of delivery. If our inspection shows that the defect does not in fact exist we may demand reimbursement of the expenses caused by the unjustified request (particularly inspection and transport costs) from the customer.
- (7)  
If the subsequent performance is not successful or the necessary deadline set by the customer for subsequent performance expires without success or is not required by the statutory provisions, the customer may cancel the contract or reduce the price. There is no right to cancellation in the event of insignificant defects, however.
- (8)  
We assume no liability for damages caused by factors unknown to us at the time the order was placed and whose subsequent magnitude was not foreseeable, for damages caused by improper handling or by mechanical wear and tear.
- (9)  
As the properties of the coatings/surface enhancements are materially affected by the quality of the workpieces, the customer must ensure that they are delivered in a suitable condition for the intended coating/surface enhancement. This particularly applies to the cleanliness of the surfaces to be treated. The customer bears the cost of damages and defects due to the fact that the workpieces supplied to us – all or some of them – were not in a suitable condition for the coating/surface enhancement. We also assume no liability for damages and defects due to the fact that workpieces were supplied to us in different raw material qualities to those which were provided to us for trial coatings or agreed.
- (10)  
If it is foreseeable that the coating/surface enhancement will be exposed to exceptional strains (e.g. chemicals, high temperatures), the customer must assume responsibility for verifying whether the intended coating/surface enhancement can withstand the demands made of it.
- (11)  
The customer may only make claims for defects up to twelve months from acceptance. This does not apply if the defect was concealed fraudulently.

## Section 11 Liability and disclaimer

- (1)  
Unless stated otherwise in the GCC, our liability for breaches of contractual and non-contractual obligations is determined by the statutory provisions.
- (2)  
We accept no liability for the suitability of a coating/surface enhancement ordered by the customer for the purpose intended by the customer – the application risk is the customer's alone. We are also not liable for damages arising during the processing or other use of the workpieces we have coated/surface enhanced.
- (3)  
Our liability for damages, on whatever legal grounds, is limited to intentional acts and gross negligence. In the event of simple negligence we are only liable for damages to life and limb or health and for damages resulting from the breach of an essential contractual obligation (the performance of which is necessary for the proper execution of the contract and on the performance of which the contracting partner regularly relies and is entitled to rely).
- (4)  
To the extent that we are fundamentally liable for damages in accordance with paragraph 3 above, our liability is limited to typical damages foreseeable at the time the contract took effect. Compensation will only be paid for indirect damages and damages resulting from defects in the workpieces to the extent that such damages are typically to be expected when the workpieces are used for their intended purpose.

(5)

The customer may only cancel or terminate the contract for the breach of an obligation which does not constitute a defect if we are responsible for the breach. The customer has no right to terminate the contract at will (in particular pursuant to Sections 651 and 649 BGB). Otherwise the statutory conditions and legal consequences apply.

(6)

The limitation period defined in Section 10 (11) also applies to contractual and non-contractual claims for damages by the customer on the basis of material defects in the workpieces, unless the application of the regular statute of limitations (Sections 195 and 199 BGB) would lead to a shorter period in any given case. Claims for damages by the customer in accordance with Section 11 (3) sentences 1 and 2 and in accordance with the German Product Liability Act are only subject to the statutes of limitations, however.

(7)

The aforementioned disclaimers and limitations of liability also apply to breaches of obligations by or to the benefit of persons for whom we are statutorily responsible. However, they do not apply to our liability for intentional acts, for guaranteed quality features, for damages to life and limb or health or under the German Product Liability Act.

## **Section 12 Choice of law and place of jurisdiction**

(1)

The GCC and the contractual relations between us and the customer are governed exclusively by the law of the Federal Republic of Germany. The UN CISG does not apply.

(2)

If the customer is a business within the meaning of the German Commercial Code the sole place of jurisdiction for all disputes resulting from the contractual relationship is our place of business, unless another place of jurisdiction is required by law.

(3)

If individual provisions of the contract with the customer, including the GCC, should be or become invalid in whole or in part, this does not affect the validity of the remaining provisions. The partially or wholly invalid provision is to be replaced by a provision that corresponds to the joint will of the parties.