

# General Terms and Conditions of Sale

(Effective 01/04/2016)

## I. Scope

- 1.1 The General Terms and Conditions of Sale set out in the following shall apply to all products and services to be provided by LAYERTEC GmbH (hereinafter called "LAYERTEC"). These General Terms and Conditions of Sale shall apply only to contracts with entrepreneurs in the sense of section 310 para. 1 BGB (German Civil Code) in conjunction with section 14 BGB.
- 1.2 Unless LAYERTEC has expressly agreed to them, any customer's general terms and conditions shall not become part of the contract. This shall apply also where LAYERTEC has not expressly contradicted, or where it performs deliveries or services without having contradicted, the customer's general terms and conditions.
- 1.3 These General Terms and Conditions of Sale shall be valid for deliveries and services in conjunction with the acknowledgement of a purchase order or a quotation by LAYERTEC.
- 1.4 The contract language shall be German. These General Terms and Conditions of Sale are made available in both German and English. In case of any discrepancy in the meaning of individual stipulations the German language version shall take precedence exclusively.

## II. Binding Agreement / Article of Sale / Copyright / Samples – Free Issue Materials

- 2.1 Unless expressly stated otherwise, any offer made by LAYERTEC shall be subject to confirmation and not binding and be merely construed as inviting offers to purchase/purchase orders from the customer.

Insofar as LAYERTEC makes any binding quotation to the customer and unless stated otherwise by LAYERTEC in any given case, LAYERTEC shall be bound by its quotation for one month from the quoting date. The contract shall be deemed agreed upon and binding if the customer accepts the LAYERTEC quotation within the acceptance period. In this case, following acceptance by the customer, LAYERTEC shall send to the customer a written acknowledgement of the order.

- 2.2 Where a customer submits to LAYERTEC an offer to purchase without being in receipt of any LAYERTEC quotation, LAYERTEC may on the basis of these General Terms and Conditions of Sale accept the customer's purchase order within one month of receipt of the order at LAYERTEC. In general, this is done by means of a written acknowledgement of the order.
- 2.3 The subject of the delivery or service to be provided by LAYERTEC is the product named in the order acknowledgement by LAYERTEC and in the specifications referred to in the acknowledgement.

Any publicity brochures or similar information on the homepage of LAYERTEC, etc., and documentation or performance characteristics on which the offer or the order acknowledgement by LAYERTEC is based, such as figures, drawings, information as to dimensions and weight or intended process technology for the deliveries and services of LAYERTEC as a rule constitute approximations only and are not binding, unless they are expressly declared binding. Properties of any samples or patterns, etc., shall only become part of the contract where this is expressly agreed upon. The

customer shall have no right to pass on any samples or patterns, etc., unless LAYERTEC has given its consent or performance of the contract necessitates it.

- 2.4 To the extent that LAYERTEC has not by contract or under compelling statutory regulations expressly granted to the customer any rights to figures, drawings, software, cost estimates, knowhow, or other data and materials (collectively "information"), LAYERTEC shall retain any and all rights of ownership and copyright with respect to such information. Without the written consent by LAYERTEC such information must not be disclosed to any third party and must be safeguarded by appropriate means against any unauthorised access by third parties. This applies in particular to all "confidential" information. The customer must not use information of LAYERTEC, nor pass it on to any third party, for any purpose other than those agreed upon or assumed in the contract with LAYERTEC. Furthermore, no information must be passed on without the customer requiring such third party to sign a written confidentiality agreement in accordance with this section.
- 2.5 Any provision by the customer of samples for the manufacture of the product or of free issue materials, especially of material to be coated, shall be free of charge for LAYERTEC. On receipt, LAYERTEC will check samples and free issue materials for complete quantity only. LAYERTEC is not obligated to check quality or functionality. Except as stipulated in section IX. LAYERTEC shall not assume any liability for samples and free issue materials. Any samples and free issue materials not used for the contractual purposes will be returned together with the delivery of the product purchased.

## III. Delivery / Default / Passing of Risk

- 3.1 Delivery dates and lead times shall be agreed upon for each case specifically and shall not be binding unless they are expressly stated as "binding". LAYERTEC will strive to meet any time/date not expressly agreed upon as binding. Lead times shall commence to run on the date the acknowledgement of the order is received, but not before all the details of the execution of the service to be rendered or the manufacture of the product have been agreed upon.

The delivery dates or lead times agreed upon shall slip or be postponed in the event that any industrial action should take place at LAYERTEC or any of its suppliers relevant to the supply of the product or the rendering of the service to the customer. Also, the delivery dates or lead times shall slip or be postponed in the event of any unexpected circumstances occurring that are beyond the control of LAYERTEC, e.g. sub-suppliers in delay, late delivery of materials, denial of official shipping permits, government action, confiscation of the contractual product, unrest, sabotage, lack of material or power, as long as such circumstances are relevant to the delivery of the product or service to the customer and not attributable to LAYERTEC. In all the above cases leading to extended lead time or postponed delivery date, the lead time shall be extended or the delivery date postponed by the duration of the impeding circumstances. This shall also apply where LAYERTEC is in delay with its delivery or service at the time such circumstances occur.

- 3.2 Should the lead time be extended or delivery date be postponed in accordance with item 3.1 para. 2 by more than three months, the customer shall have the right to set a

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reasonable period of grace for LAYERTEC to perform its delivery or service. If LAYERTEC fails to deliver within the period allowed, the customer shall have the right to terminate such part of the contract as is not yet performed. Should LAYERTEC have delivered part of the contract performance, the customer shall not have the right to terminate the entire contract, unless the customer is not interested in the part already delivered.

- 3.3 Should the customer request any changes to the product or should changes to the product become necessary in accordance with item 6.1 or 6.2, the lead time shall be extended or the delivery date postponed by such period of time as is required for making the change to the product.
- 3.4 Should the customer delay or fail to perform any action of cooperation necessary on its part for the product or service to be provided, then the lead time shall be extended or delivery date shall be postponed by such period of time as the customer takes to rectify the cooperation omitted on its part. Consequently, the grace period shall start at the time the cooperation would have been due according to the contractual agreement. If no time has been specified for the action of cooperation to be performed the grace period shall commence with the receipt by the customer of LAYERTEC's request for cooperation. The grace period ends with the completion of the action of cooperation by the customer.
- 3.5 Unless stipulated otherwise, delivery of the product or service shall be ex works. Unless otherwise agreed upon, LAYERTEC shall at the customer's expense purchase goods in transit insurance for reasonable cover at reasonable cost.
- 3.6 Instalment delivery or service shall be allowed to the extent deemed acceptable to the customer.
- 3.7 The risk of accidental loss or accidental deterioration of the product shall pass to the customer at the time the product is handed over to the customer or to the carrier employed by the customer. This shall apply to instalments or consignments as soon as the respective instalment or consignment is handed over.

Should the customer fail to take delivery, the risk of accidental loss or accidental deterioration of the product shall pass to the customer at the time the customer fails to take delivery.

- 3.8 In the event of culpable failure on the part of the customer to take delivery or perform any other duty to cooperate, LAYERTEC shall be entitled to claim compensation for the resulting damage, in particular the profit lost including extra expenditure, if any.
- 3.9 Should LAYERTEC fail to deliver the product or service when due, the customer may set a reasonable period of at least two weeks within which LAYERTEC is to deliver. Upon futile expiration of such period the customer shall be entitled to terminate the contract. In this case the customer shall only have the right to claim damages for non-performance if such failure to perform was caused by intent or culpable negligence on the part of LAYERTEC, its legal representatives or agents. Damages for non-performance shall be limited to the loss typically predictable in such case.

## IV. Price and Terms of Payment

- 4.1 All prices shall be deemed net prices exclusive of value added tax at the current statutory rate. Prices are ex works inclusive of normal packaging. Unless otherwise agreed upon, the amount invoiced shall be due for payment within 30 calendar days of the date the invoice is received.

Where the product is modified at the customer's request, the customer shall bear the resulting costs. Where the product is specifically packaged or insured at the customer's request, the customer shall bear the resulting costs.

In the event of any increase in material procurement costs, labour costs and costs of fringe benefits, energy costs and costs under environmental regulations, LAYERTEC shall have the right to unilaterally raise the purchase price reasonably (section 315 BGB (German Civil Code)) on the proviso that there are more than four months between the signing of the contract and the delivery.

- 4.2 In the case of export delivery the customer shall bear all taxes, customs duties and dues payable in conjunction with the sales contract outside the Federal Republic of Germany.
- 4.3 Insofar as the purchase price is not paid by cash deposit LAYERTEC may request reasonable collateral for the payment of the purchase price (e.g. documentary credit, bank guarantee, letter of credit) prior to despatch.
- 4.4 If and when the realisable value of all the secured claims LAYERTEC is entitled to, including the rights resulting from the extended retention of title under section V., exceeds the amount of all secured claims in the long term by more than 30%, LAYERTEC shall release an appropriate part of the collateral upon the customer's request. It shall be LAYERTEC's choice what collateral to release.
- 4.5 The customer shall not be entitled to deduct any counterclaim from the amounts payable to LAYERTEC, unless such counterclaim is undisputed or has been confirmed by final court decision. Moreover, the customer shall not exercise any right to hold back money, unless its counterclaim is based on the same contractual relationship.

## V. Retention of Title

- 5.1 The purpose of the retention of title agreed upon in the following is the assurance of all present and future claims receivable by LAYERTEC from the customer out of any supply or service contracts between the parties hereto (including any current account balance restricted to this business relationship).
- 5.2 LAYERTEC retains legal ownership of the product provided to the customer by LAYERTEC until all the secured claims have been paid up in full. The product, and in its place the goods subjected to retention of title under this contract will be referred to as the reserved goods in the following.
- 5.3 The customer shall store the reserved goods for LAYERTEC free of charge. The customer shall treat the reserved goods with care and purchase at its own cost fire, water damage and theft insurance for adequate replacement value cover.
- 5.4 The customer shall be entitled to process and sell the reserved goods in its normal course of business. The goods must not be pledged or assigned as security.

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5.5 Where the reserved goods are processed by the customer, the processing shall take place in the name and for the account of LAYERTEC as the manufacturer and LAYERTEC directly acquires legal ownership or, where the processing involves materials of several owners or where the value of the processed item exceeds that of the reserved goods, an interest (fractional ownership) in the newly manufactured goods at the ratio of the value of the reserved goods to the value of the new goods. In case no such acquisition of ownership by LAYERTEC should occur, the customer hereby assigns to LAYERTEC as security its future title or interest at the above ratio in the new goods. Where the reserved goods will be united or inseparably mixed with other goods to form mixed goods and any of the other goods are to be deemed the main goods, the customer, to the extent it owns the main goods, shall assign to LAYERTEC proportional interest in the mixed goods at the ratio named in sentence 1. LAYERTEC hereby accepts such assignment.

5.6 In order to provide security in case the reserved goods are sold on, the customer herewith assigns to LAYERTEC the resulting receivables from such purchaser, in proportion to the interest where LAYERTEC owns an interest in the reserved goods. The same shall apply to any other claims in place of the reserved goods or otherwise resulting with respect to the reserved goods, such as insurance claims or tort claims in the event of loss or destruction. LAYERTEC accepts this assignment.

LAYERTEC grants the customer revocable power to collect in its own name for the account of LAYERTEC the amounts receivable assigned to LAYERTEC. Should the customer act in breach of this contract, in particular should the customer fail to make payment when due, LAYERTEC may revoke this power to collect payments and require the customer to disclose to LAYERTEC the amounts receivable assigned and the respective debtors, to notify the respective debtors of the assignment made, and to provide to LAYERTEC all documentation and information LAYERTEC requires for asserting its claims.

5.7 Should any third party seize the reserved goods, especially by attachment, the customer shall immediately point out to such third party the legal ownership of LAYERTEC and shall notify LAYERTEC so that it may assert its title rights. To the extent that such third party should not be able to remunerate the legal and other costs incurred by LAYERTEC in this case, the customer shall be liable to pay such costs.

5.8 Should the customer act in breach of this contract, in particular should the customer fail to make payment when due, LAYERTEC shall have the right to repossess the reserved goods after setting a reasonable grace period for the contractual obligations to be performed. The costs of transport for the purpose of repossession shall be borne by the customer. Repossession by LAYERTEC of the reserved goods constitutes termination of the contract. Seizure of the reserved goods by LAYERTEC also constitutes termination of the contract. Reserved goods repossessed by LAYERTEC may be utilised by LAYERTEC. The revenue from such utilisation, after LAYERTEC has deducted a reasonable amount for the utilisation costs, shall be deducted against such amounts as the customer owes to LAYERTEC. If LAYERTEC terminates the contract because the customer is in breach of contract, especially in default of payment, LAYERTEC shall be entitled to demand the reserved goods to be returned.

Should a retention of title clause in favour of LAYERTEC be wholly or partly impossible or ineffective for legal or factual reasons, the customer shall be obliged, at the request of LAYERTEC, to create a legal and effective assurance (e.g. a lien on the object of purchase) for LAYERTEC. Should there be a variety of securities to be considered, then LAYERTEC shall have the choice as to what security is to be registered. LAYERTEC shall decide in its reasonable discretion.

The customer undertakes not to cause any changes to the specifications of the product without the prior written consent of LAYERTEC and not to attach to it or use in connection with the product any additional equipment not approved by LAYERTEC for as long as legal ownership of the reserved goods has not yet passed to the customer.

## VI. Change to Specifications

6.1 Up to the delivery of the object of purchase LAYERTEC may change specifications of the product as long as such changes are necessary in order to manufacture a flawless product, do not alter essential technical characteristics of the object of purchase and are deemed acceptable to the customer. Also, the customer shall agree to further changes suggested by LAYERTEC, insofar as these are acceptable to the customer. Where such changes would cause the purchase price to increase, this shall be agreed upon between the parties prior to the execution of such changes.

Moreover, up to the delivery of the product, LAYERTEC may change the process technology intended for manufacturing the product at the time the order was placed, insofar as this will not change essential technical characteristics of the object of purchase and such changes are deemed acceptable to the customer.

6.2 Any changes to specifications of the product, of accessories or other services, which prior to their delivery should become necessary because of statutory regulations or official orders outside the Federal Republic of Germany shall be carried out by LAYERTEC at the customer's expense.

## VII. Warranty

7.1 The customer shall check the product immediately on delivery. The customer shall report by written notification any obvious defect immediately and no later than within seven days of delivery, and any hidden defect immediately and no later than within seven days of its detection.

7.2 LAYERTEC may at its discretion repair or replace any defective delivery or service within a reasonable grace period. In the event that such repair or replacement should fail twice, the customer may at its discretion reduce the purchase price or terminate the contract.

7.3 Unless otherwise agreed upon, the warranty period for the product including any accessories bought with it is 12 months from the date of delivery.

No liability shall be assumed for normal wear and tear. Moreover, LAYERTEC shall not be responsible for the applicability of the product for any particular use or purpose, unless this is expressly agreed upon between the parties. Furthermore LAYERTEC shall not be liable for any suitability of the product, insofar as the product is not used for its ordinary use, unless this is expressly agreed upon between the parties.

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- 7.4 LAYERTEC shall not assume responsibility or warranty for any defect or damage to the product, if the customer itself or with the help of any third party not instructed or authorised by LAYERTEC has carried out any repair, rectification or installation work on the product, the customer has failed to observe the manufacturer's instructions or has used the product inappropriately, unless the customer disproves the substantiated assertion by LAYERTEC that the defect or damage concerned is attributable to and was caused by such repair, rectification or installation work by the customer or any unauthorised third party, failure to observe the manufacturer's instructions or any inappropriate use etc. of the product.
- 7.5 Where LAYERTEC provides coating services on materials to be coated or other free issue materials provided by the customer, LAYERTEC shall not be liable for any defect in the coating services insofar as such defect is attributable to the material for coating or any other free issue material provided by the customer.
- 7.6 The costs of any unjustified notice of defects by the customer, in particular the costs of inspecting the defect notified, shall be borne by the customer.

## VIII. Intellectual Property Rights; Defect of Title

Unless otherwise agreed upon, LAYERTEC shall provide the product free of any third party industrial trademark or copyrights (hereinafter: intellectual property rights). Should any third party lodge any justified claim against the customer for infringement of intellectual property rights by its contractual use of products or services provided by LAYERTEC, then LAYERTEC shall be liable to the customer as follows:

- 8.1 LAYERTEC shall at its discretion and at its own cost obtain the right of use for the products or services concerned or, where deemed acceptable to the customer, modify or replace the product or services in such a way that there is no infringement of the intellectual property right.

If this is not possible at reasonable terms for LAYERTEC, the customer shall be entitled to make use of its statutory rights of termination or price reduction. The customer shall not be entitled to claim compensation for futile expenditure.

For any obligation to pay damages refer to section IX.

- 8.2 The above obligations on the part of LAYERTEC shall not be valid unless the customer notifies LAYERTEC forthwith in writing about any claim lodged by any third party and all defensive measures and settlement conferences are reserved to LAYERTEC.

The customer shall not have the right to acknowledge to the third party any infringement of intellectual property rights, unless LAYERTEC has agreed to such acknowledgement. In the event that the customer should discontinue the use of the products or services for mitigation or other reasons, the customer shall be obliged to point out to the third party that its discontinuation of the use does not constitute any acknowledgement of an infringement of intellectual property rights.

- 8.3 Any claim on the part of the customer shall be precluded where any infringement of intellectual property rights is attributable to

the customer or where infringements of intellectual property rights have been caused by design documentation or any other specific demand made by the customer with respect to the product or service or have been caused by inappropriate use, or by the customer altering the product or service or using it together with products not supplied by LAYERTEC.

- 8.4. The stipulations of section VII. shall be applied accordingly with respect to other defects of title. The customer shall have no further right to lodge any claim beyond those in sections VIII. and VII. against LAYERTEC on grounds of any defect of title.

## IX. Damages

- 9.1 LAYERTEC shall not be liable in cases of ordinary or slight negligence.
- 9.2 In the event of gross negligence the liability of LAYERTEC shall be limited to such damage as can typically be expected to occur.
- 9.3 The disclaimer and limitation of liability under items 9.1 and 9.2 shall not apply where the liability of LAYERTEC is caused by intent, by the absence of any property promised or guaranteed, by mandatory liability under product liability legislation, injury to life, limb or health, violation of fundamental contractual obligations (obligations required for the proper execution of the contract and the performance of which the customer had a right to rely upon) or by any other legally mandatory liability.
- 9.4 The stipulations in items 9.1 to 9.3 shall also apply to any claims of the customer against employees or agents of LAYERTEC.
- 9.5 The stipulations in items 9.1 to 9.3 shall also apply where legal representatives or assistants of LAYERTEC have been acting on behalf of LAYERTEC.

## X. Miscellaneous

- 10.1 Any and all agreements between LAYERTEC and the customer shall be made in writing. Any waiver of this requirement of written form shall be made in writing only.
- 10.2 Without the prior consent of the party concerned, both parties to the contract must neither utilise nor disclose to any third party any of the other party's trade secrets or confidential information which have become known to them during their business relationship, unless such trade secret or confidential information is in the public domain. This shall also apply after the execution of this contract.
- 10.3 This contract shall be governed by the law of the Federal Republic of Germany; the provisions of the United Nations Convention on Contracts for the International Sale of Goods dated 11/04/1980 shall not be applied.
- 10.4 The exclusive legal venue for any claims arising out of this contract shall be Weimar, unless there is any statutory exclusive legal venue. Place of performance for all deliveries, services and payments shall be Mellingen.
- 10.5 Should any stipulation of this contract be or become void in whole or in part, or should there be any omission in this agreement, this shall not affect the validity of the remaining stipulations of this contract.