



## **GENERAL TERMS AND CONDITIONS** **PURE & ORIGINAL INTERNATIONAL B.V.**

### Art. 1. Definitions.

1.1. In this document means:

- a. 'General Terms: this document;
- b. 'Contracting Party': each party who purchases a Product or Products from Pure & Original International or request for an offer, not being a consumer;
- c. 'Electronic Communication': means electronically reproducible message, such as email or digital message via the designated website of Pure & Original International;
- d. 'Agreement': a (purchase)agreement between the Contracting Party and Pure & Original International, pursuant to which Pure & Original International is obliged to deliver the Products;
- e. Pure & Original International: the private company with limited liability Pure & Original International B.V., having its address in Lelystad, The Netherlands – hereinafter P&O International;
- f. 'Products' or 'Product': paint and paint related products containing the 'Pure & Original' trademark, as well as related products, in the broadest sense of the word.

### Art. 2. Applicability.

- 2.1 The General Terms apply to the Agreement.
- 2.2 Unless explicitly accepted in writing or by Electronic communication by P&O International, general and/or other (purchasing) terms and conditions of the Contracting party are rejected by P&O International.
- 2.3 If any of the Contracting Party's terms and conditions are nevertheless (partially) applicable or are declared to be such, the General Terms will prevail in the event of a contrariety.

### Art. 3. Entering into Agreement.

- 3.1 An offer by P&O International, in whatever form, is non-binding and does not oblige P&O International to deliver the products. Unless explicitly stated otherwise, an offer is valid for a maximum of 14 days. Stock offers are always subject to interim sales.
- 3.2 The Agreement is entered into as follows:
  - a. by confirmation, either in writing or by Electronic Communication, of an order received by P&O International by Electronic Communication;
  - b. via the order procedure on the designated website/webshop of P&O International;
  - c. by confirmation, either in writing or by Electronic Communication, of an order received by P&O International by telephone;
  - d. at the moment P&O International de facto starts with the

delivery, provided that delivery starts within 4 weeks upon receipt of the order.

- 3.3 An Agreement prepared by agents, personnel and/or other intermediaries is subject to the explicit confirmation by P&O International, either in writing or by Electronic Communication.
- 3.4 Complementation or alteration to (oral) promises by P&O International or one of its staff, representatives, or agents are solely binding pursuant to either a confirmation of P&O International by a duly representative, which is in writing or by Electronic Communication, or start of delivery by P&O International.

### Art. 4. Delivery.

- 4.1 The stated delivery times are in each case deemed as estimated delivery times and shall never be considered as final dates unless explicitly otherwise agreed in writing or by Electronic Communication.
- 4.2 Unless explicitly agreed otherwise, all deliveries are Ex Works pursuant to the Incoterms 2010. As of the moment of delivery the Products are for the account and at risk of the Contracting Party.
- 4.3 The transportation risk, in whatever form, from the delivery moment 'Ex Works' to the address of the Contracting Party always remains with the Contracting Party.
- 4.4 At the exceptional request of the Contracting Party, P&O International will arrange, on behalf of the Contracting Party, the transport to a designated delivery address. An external transporter will be contracted for the transport. The transport risk, if insured, will be in accordance to the terms and conditions of the transporter. P&O International is authorized to charge the transport costs on the Contracting Party. If applicable, custom and import duties are for the account of the Contracting Party.
- 4.5 Partial delivery by P&O International is permitted. In case of partial delivery the Contracting Party shall pay the invoice as if it was a separate transaction.

### Art. 5. Prices.

- 5.1 The Contracting Party shall provide its VAT-identification number to P&O International, as well as the name of company under which the Contracting Party is registered with the tax authorities in its country of residence.
- 5.2 All prices are in EURO and without VAT (Value Added Tax) and excluding transportation costs, custom and import duties.
- 5.3 P&O International is entitled to change the prices at its own discretion. Each price change shall become in force at the



moment that the Contracting Party is notified or could have received notice by P&O International, either in writing or by Electronic Communication.

5.4 With respect to resale of the Products to third parties (including to consumers) P&O International provides recommended retail prices for the Products to the Contracting Party. P&O International carefully determines these recommended retail prices based on (i) its marketing targets being high-end product quality and brand experience and (ii) investments in the 'Pure & Original' trademark. In order to prevent damage *casu quo* risk of damage to the trademark and brand name 'Pure & Original', the Contracting Party is prohibited to offer the Products for dumping prices and/or discount actions.

#### Art. 6. Retention of title.

6.1 Prior to each delivery P&O International is entitled to request for security of payment, at its own judgment, with respect to the payment obligation of the Contracting Party.

6.2 All Products delivered by P&O International remain its property until the Contracting Party has fulfilled the following obligations derived from the Agreement:

- a. the compensation (purchase price) for the delivered Products;
- b. any account receivable by P&O International from the Contracting Party in connection with a breach (of contract) by the Contracting Party.

6.3 The Contracting Party shall ensure that the Products delivered under retention of title are secured by insurance and are stored in building with conditions (temperature, air humidity) within the boundaries pursuant to the product specifications.

6.4 The Contracting party hereby grants permission in advance to P&O International, or a party designated by P&O International, to enter the building and premises of the Contracting Party in order to inspect the Products delivered under retention of title and in case of sufficient reason to secure or retrieve the Products.

#### Art. 7. Complaints.

7.1 Upon receipt of the Products, the Contracting Party is obliged to immediately inspect the Products in terms of defects and quantity (including, not limited to, inspection of labels on the packages).

7.2 Within 3 days upon receipt of the delivered Products, the Contracting Party shall notify, supported by photos, P&O International in writing or by Electronic Communication in case of any complaint relating to visual damages and quantity. In case of non-visual damages a term of 8 days upon receipt of the Products applies in which the Contracting Party could reasonably detect the damages. In this context a minor discrepancy - which is usual for similar products - in colour, quality, finishing and quantity does not qualify as a legitimate complaint.

7.3 Legitimate complaints relating to delivered quantities, will be dealt with by P&O International in the form of a subsequent delivery Products or by a (proportional) reduction on the purchase price.

7.4 Legitimate complaints relating to defects will be dealt with by P&O International in accordance with the guarantee conditions as set out in article 8 of the General Terms.

7.5 Complaints relating to invoices must be received by P&O International within 8 days after the invoice date, either in writing or by Electronic Communication. A complaint without reason will not be dealt with by P&O International.

7.6 After the abovementioned terms have passed, the Contracting Party is deemed to have accepted the delivered Products and the invoice(s) and P&O International will refuse submitted complaints.

7.7 Filing of a complaint does not relieve the Contracting Party from its (payment) obligations in respect of the Agreement. Furthermore the Contracting Party does not have the right to suspend, settle or postpone (prior) payment obligations pursuant to filing of a complaint.

#### Art. 8. Guarantee.

8.1 Unless otherwise agreed in writing, P&O International guarantees that the Products fulfill the prescribed requirements, qualities and/or features which the Contracting party may reasonably expect in case of normal use.

8.2 If to the exclusive judgment of P&O International the appeal to the guarantee is justified, P&O International shall provide at its discretion replacing Products or give a (proportional) reduction on the purchase price. P&O International shall not compensate costs which are made to attach the Products ('painting').

8.3 An appeal to a guarantee by the Contracting Party must be filed with P&O International well documented with clear description and photos, either in writing or by Electronic Communication.

8.4 The guarantee becomes void if the Products are used incorrect *casu quo* user requirements are breached, incompetent repairs and alterations are made to the Products (including mixture with other liquids other than prescribed), as well as removal and disfiguration of numbers and/or identification (plombes) on the Products.

8.5 If the Contracting Party mixes colours on its own authority the guarantee in respect of this article expires, unless the Contracting Party can prove - at its own cost - either that a production error in the basis or pigments is causing the default, or if the provided colouring scheme in the Pure & Original colour database is incorrect. The guarantee solely applies to the Pure & Original colours. Furthermore the guarantee expires if the colour mixer (machine) is not yearly maintained by a authorized service mechanic.

8.6 P&O International does not guarantee that the colour as shown on the designated website / webshop or otherwise will be exact similar to the colour upon application.



8.7 The guarantee expires after 6 months as of the delivery date of the Products by P&O International to the Contracting Party. After expiry the guarantee becomes void.

8.8 If the Contracting Party resells the Products with a more exhaustive guarantee, such guarantee is for the account and risk of the Contracting Party.

8.9 Only with prior approval of P&O International a Contracting Party is authorized to return Products under appeal of the guarantee under this article to P&O International.

#### Art. 9. Liability.

9.1 The liability of P&O International is limited by law, fulfillment of the guarantee as set out in article 8 and the provisions in this article.

9.2 The liability of P&O International in case of a accountable breach of this Agreement arises only to the extent that the Contracting Party has sent a written notice of default, immediate after the default, stating a reasonable term for P&O International to redeem the default, whilst P&O International fails to fulfill its obligations even after the term. The notice of default must contain a detailed description of the default, in order for P&O International to respond accordingly.

9.3 In case of liability of P&O International, only direct damages will be compensated. P&O International will not compensate consequential loss, immaterial damage, company damage, environmental damage, or loss of profit.

9.4 Regardless any product- and company's liability insurance, the liability of P&O International is limited to a general maximum of € 3.000,00 (in words: three thousand euro) per case of damage or related series of incidents.

9.5 Claims of damages must be submitted to P&O International, either in writing or by Electronic Communication, within 7 days, or as early as possible after the moment the Contracting Party has been able to identify the damage, under penalty of lapsing of any right to compensation.

9.6 The Contracting Party indemnifies P&O International hereby for all claims by third parties, including damages, interests and costs, in connection with the Agreement or the delivered Products.

9.7 If P&O International is unable to fulfill its obligations pursuant to the Agreement due to force majeure, such as fire, strike, environmental disaster, et cetera, P&O International as well as the Contracting Party have the right to postpone its obligations. If the event lasts longer than 3 months, P&O International and the Contracting Party are entitled to request wholly or partially dissolution of the Agreement, without any right for compensation whatsoever.

#### Art. 10. Suspension and Dissolution.

10.1 If the Contracting Party does not fulfill one or more of its obligations pursuant to the Agreement or the General Terms

and/or the fulfillment is defective or not in due time, P&O International is entitled to suspend its obligations. In such case the Contracting Party is liable for all damages suffered by P&O International, including loss of profit.

10.2 In the event that the Contracting Party:

- a. is declared bankrupt, has filed for suspension of payment, otherwise loses the control over its assets;
  - b. dies or has become legally incompetent;
  - c. fails to perform one or more of its obligations pursuant to the law or the Agreement;
  - d. does not pay an invoice of P&O International within the term of payment, wholly or partially;
  - e. dissolves its company, or proceeds to discontinue or transfer its business, or a major part thereof, including incorporating its business in a company, or changes the objectives of its company.
  - f. breach of article 5.4 of the General Terms,
- than P&O International has the right to terminate the Agreement in writing with immediate effect without losing the right to request for compensation for all incurred damages, costs and interest by P&O International.

#### Art. 11. Payment.

11.1 Unless agreed otherwise, payment should be made, at the discretion of P&O International in Euros:

- a. direct payment at the moment of placing the order;
- b. by transfer to the designated bank account of P&O International within 14 days after the invoice date.

11.2 If the Contracting Party does not pay within the term of payment as set out in paragraph 1 under b the Contracting Party is legally in default. In such case P&O International is entitled, without further notice of default and loss of other rights, to an interest of 1% per month as of the moment of the default until the moment of receipt of full settlement.

11.3 Each payment by the Contracting Party is primarily deducted from the outstanding interest and other legal and out of court (collection) costs, and subsequently deducted from the eldest outstanding invoice.

11.4 Unless with the prior explicit approval of P&O International, the Contracting Party is prohibited to settle payment of an invoice with any other account receivable.

11.5 All reasonable costs incurred by P&O International with respect to the payment obligation of the Contracting Party, such as legal and out of court collection cost, are for the account of the Contracting Party. The out of court collecting costs are determined pursuant to the decision fee extrajudicial costs / Law collection costs ('WIK') of the Netherlands. In the event that the Contracting Party has domicile in a foreign country the collection costs amount to at least 20% of invoice amount.

#### Art. 12. Cancellation.

12.1 The Contracting Party has the right to cancel an order of Products, provided that the cancellation is received by P&O



International on the same date (before 24:00 hour) as the Agreement. The right to cancel lapses if the Products are already prepared pursuant to the Agreement.

12.2 Upon expiry of the term for cancellation as set out in the foregoing paragraph, P&O International will be no longer obliged to accept a cancellation. In case P&O International nevertheless accepts the cancellation, P&O International is entitled to a fixed damage being 50% of the invoice amount, to be accrued with the costs of the suppliers of P&O International.

#### Art. 13. Intellectual Property Rights.

13.1 Pure & Original B.V retains all intellectual and industrial property rights with respect to its trademarks, trade and brand names, models, designs, pictures, drawings, software, texts, et cetera.

13.2 Unless with prior written or by Electronic Communication received approval by Pure & Original B.V, the Contracting Party is prohibited to damage or use the intellectual and industrial property rights, for example by reproduction or publication.

#### Art. 14. Miscellaneous.

14.1 If any provision in this Agreement shall be held to be illegal, invalid or unenforceable, in whole or in part, such provision or part shall to that extent be deemed not to form part of the Agreement but the legality, validity or enforceability of the remainder of the Agreement shall not be affected, and P&O International and the Contracting Party shall use reasonable efforts to agree a replacement provision that is legal, valid and enforceable to achieve so far as possible the intended effect of the illegal, invalid or unenforceable provision.

14.2 Third parties cannot derive any rights from the Agreement.

14.3 The Contracting Party is prohibited to transfer any rights derived from this Agreement to a third party without the prior approval of P&O International.

14.4 Expressions to third parties by the Contracting Party with respect to a Product or Products may not be misleading.

14.5 P&O International is entitled to change the General Terms at its own discretion. P&O International will notify the Contracting Party of any changes in due time, either in writing or by Electronic Communication.

14.6 All data of a Contracting Party with an account submitted to P&O International via the designated website, will be stored and processed in conformity with current legislation. At any time the Contracting Party is authorized to request for inspection or removal of his data. The Contracting Party allows P&O International to process the data with respect to the fulfillment of the Agreement, including to third parties designated by P&O International to fulfill the Agreement.

#### Art. 15. Governing law and dispute resolution.

15.1 The Agreement is solely governed by Dutch law.

15.2 The application of the Vienna Convention on Contracts for the International Sale of Goods ('CISG') is explicitly excluded.

15.3 Disputes arising from the Agreement shall be resolved by negotiation, reasonable and fair. A dispute with respect to Products or a Product defect shall be resolved based on the advice of a specialist from the factory, where Pure & Original produces the Products.

15.4 If parties are unable to resolve the dispute in accordance with the paragraph 2, the dispute shall be resolved by the authorized court in the district of Central Netherlands (Midden-Nederland).

\* \* \*