

Coating Service General Terms and Conditions of Systec Vacuum Coating GmbH & Co. KG

Systec Vacuum Coating GmbH & Co. KG (further called: Systec) offers, services and deliveries will be provided solely on the basis of the following General Terms and Conditions, which also apply to all and any future business relationships, even if no separate agreement exists at such time.

Systec does not recognize, and will not be bound to any diverging terms and conditions employed by the customer. Such diverging terms and conditions will not be binding even if the customer issues counter- confirmations, including limitations of accepted offers submitted by Systec and by doing so referring to its own terms and conditions. The same shall apply if Systec performs any service or delivery, or accepts any payments with subject to no reservation. Unless confirmed in writing by Systec no derogation from these Terms and Conditions shall be valid. Any waiver to these General Terms and Conditions or any other written requirements shall demand the written form to be valid.

I. Offer, Technical Documents

1. Systec offer is on the first hand subject to change without notice and is on the second hand not binding unless otherwise stated in the order confirmation. An order will only be accepted by Systec written confirmation (order confirmation, which is decisive for Systec). If the order confirmation contains any derogation from the offer, these changes shall be deemed agreed only by an expressed written confirmation. Collateral agreements and changes need to be confirmed in writing by Systec. In case that an order is not confirmed by Systec, the delivery note by Systec after having fulfilled the order and/or the invoice shall then be the order confirmation.

2. Any informations from brochures, catalogues and technical documents are not binding, except where these were explicitly designated as binding in the order confirmation in accordance with Sec. I 1. Systec reserves its ownership rights and copyrights in any illustrations, drawings, cost estimates and other documents. In the absence of a written approval, no documents may be made available totally or partially to any third parties or may be used beyond the primary purpose for which they were sent to the customer.

II. Orders

1. When placing an order, the customer shall provide all necessary and important information for Systec regarding the goods which are provided for the customer and which have to be coated by Systec (hereinafter also referred to as the "Items

Provided"). These information include article description, list and number of items, measurements, material, material number and/or material composition, any preparatory treatment, provisions applicable to the surfaces to be coated, coating specifications, heat treatment, international standards and itemised values of the Items Provided. This also includes information on any other treatment specifications and requirements regarding the storing of the items provided.

2. Any changes in the material composition and the preparatory treatment, if there occur any, of the Items Provided (including heat treatment, without limitation) must be notified to Systec within an appropriate time.

3. Systec is entitled to obtain any supplementary information from the customer that seems to be necessary for correct treatment and coating of the Items Provided.

III. Scope of Services, Changes to Services, Coating Centre

1. The order confirmation conclusively lists Systec services. Where there is no order confirmation respectively no Systec delivery note and/or invoice it is deemed an order confirmation in accordance with Sec. I (1) above, the order placed by the customer shall be decisive if no objections are made.

2. Systec reserves rights to modify the content of the appropriate service at any time if the customer has not, prior or with concluding the contract, provided the information, or has provided incomplete or incorrect information pursuant to Sec. III (1), although the information would have been essential for making a final offer by Systec. Any costs or delays resulting from such incorrect or incomplete information shall be charged to the customer.

3. Systec reserves the right to perform the coating of the Items in another coating centre than the centre accepted by the order, without additional cost for the customer. Such changing of the coating centre may be considered particularly if

- the other coating centre seems more suitable for the special order;
- the coating centre accepting the order cannot reasonably be expected to perform the service, or the service cannot be performed by it;

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- the coating centre accepting the order is unable, due to unforeseeable circumstances for which it is not responsible, to perform the service; or
- for other reasons which are not unreasonable for the customer.
- for other reasons which are not unreasonable for the customer.

IV. Impossibility of Performance

1. If it is impossible for Systec to deliver the performance agreed upon, both parties may withdraw from the contract.
2. To the extent that the impossibility of performance, the deterioration or perishing thereof results from circumstances for which the customer is responsible, Systec shall claim to receive an appropriate compensation for the services already performed by it, and the expenses incurred. Any further claims Systec may have against the customer shall not be affected thereby.

V. Delivery of Goods and Incoming Inspection

1. The customer shall, when delivering the Items Provided which should be coated by Systec be in accordance with the individual order or in accordance with the order confirmation, and the accompanying document (delivery note) has to state the number, description and value of the goods. Furthermore, the goods shall be accompanied by all information required for coating them, in particular detailed treatment specifications (see ||.1). This also applies for any special requirements for the storage of highly sensitive substrates requiring observation; in this case Systec shall receive a separate, appropriate remuneration for the observance of such requirements unless expressly agreed in writing. For any deliveries from abroad the additional information is required, to be indicated on a pro forma invoice: individual price and total value, number of packaging items, gross and net weight, country of origin of the goods, type of transport, delivery date, and requested type of transport for return of goods, if transport has been agreed. If it has been contractually agreed that Systec picks up the goods, the information shall be enclosed with the Items Provided, duly packed and ready for transport.
2. Systec is not liable for any loss, delay in delivery, confusion etc. arising as a result of inaccurate labelling and wrong identification of the goods by the customer, its forwarding agent etc.
3. The goods need to be delivered, labelled by the customer, in an appropriate manner, and shall

correspond to the specifications and drawings agreed in the order. They need to be in a condition capable of being coated, that means the coatability (the material is suitable to be coated in the requested and ordered specification) of the delivered goods must be guaranteed. A condition where items are not capable of being coated occurs in these cases in which Systec liability is excluded in accordance with Sec. XI (4) below.

4. The goods undergo an incoming inspection by Systec which shall be restricted to a rough check (freedom from external damage, identity, quantity). Any defects found shall be immediately notified to the customer.
5. Any goods not meeting the requirements mentioned above may be returned by Systec at the customer's expenses and risk. Systec reserves to exercise its rights under Sec. III (2) and Sec. IV. The customer is obliged to refund any damage, including lost profits, arising from the good's improper condition for coating.

VI. Prices and Terms of Payment

1. Unless otherwise specified in Systec order confirmation, the price list applicable at the time of performance shall apply to any materials, staff and incidental costs, add. VAT. Any services or deliveries not listed in the order confirmation shall be invoiced separately. This shall also apply to any additional expenses required by the rendering of the performance due to any circumstances for which the customer is responsible.
2. Unless otherwise agreed, the prices quoted are "ex works", not including transport insurance, packaging or other duties (customs duties, fees).
3. Systec demands a reasonable advance payment upon conclusion of the contract. Invoices for advance payments and all other invoices have to be paid upon receipt by the customer, subject to no deductions, and shall be paid within 10 days from the invoice on. Bills of exchange and cheques will be accepted in payment only, subject to Systec consent. They will only be deemed a payment following unconditional credit of the relevant amount. Any costs and expenses shall be borne by the customer.
4. The customer is not entitled to any rights of setoff, except where counter-claims have been accepted by Systec and are undisputed or have been recognized by declaratory judgment. The customer shall only have a right of retention if its

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counter-claim is based on the same contractual relationship, and is accepted, undisputed or recognized by declaratory judgment, or if Systec has breached its duties in a material way under the same contractual relationship in spite of having received a written warning, and has not offered reasonable security.

5. If invoices are not paid within 10 days from the date of the invoice, the customer shall be in default even with no reminder being sent. In such case of default, Systec is entitled, without touching any further rights it may have, to invoice the customer for default interest at a rate of 8% p.a. above the base rate applicable from time to time.

6. No interests shall be paid on any realized advance payments.

7. The agreed payment dates shall be kept valid even if a delay in delivery occurs for which Systec is not responsible.

8. Systec reserves the right to reasonably adapt its prices if reductions or increases in cost, in particular due to collective bargaining agreements or changes in materials prices or manufacturing costs occur after the contract's conclusion.

9. Systec reserves the right to modify its prices and to invoice additional services if changes in the coating material occur during processing because information and documents provided by the customer did not correspond to the factual circumstances or were incomplete; or the type or scope of the services as in the order confirmation were modified at the customer's request.

If the necessity of additional services arises prior to the commencement of the coating process (e.g. special preparatory treatment or special mountings), Systec shall notify the additional costs to the customer before starting process.

VII. Transport, Packaging and Insurance, Storage

1. Systec shall perform the pickup and delivery of the goods at the customer's request and his cost and risk. Transport shall, at the customer's request, be covered by a transport insurance and these costs shall be borne by the customer. Any special requirements regarding shipment, transport and transport insurance have to be declared within an appropriate time.

2. Any objections concerning shipment or transport shall be raised by the customer upon receipt of the

goods or freight documents immediately with the last haulage contractor.

3. If the packaging delivered cannot be used for return transport, any packaging supplied by Systec shall be invoiced.

4. The Items provided shall be handled with care while they remain in the Systec centre, and shall be treated with the same care which Systec applies in its own affairs. Systec shall in particular not be liable for any damage that may occur through the storage of the goods in spite of reasonable care having been applied (rust stains etc.). Unless otherwise agreed in writing, Systec shall pay a compensation for damage caused to the Items Provided only in cases Sec. XIII below. Any further liability is excluded. Systec is not obliged to take out insurance. This shall apply unless expressly agreed otherwise in writing; and, in this case, at the customer's costs.

VIII. Time Limits and Dates

1. Time limits and dates specified by Systec will only be binding if expressly designated as binding in writing, and if these dates & limits are specified with Systec and if these take into account all circumstances regarding material and rendering of services. The observance of the obligation to deliver shall be conditional, in particular, upon the customer's obligations being fulfilled duly and in the appropriate time. The defence of non-performance of the contract is reserved. Time limits and dates specified as binding by Systec in writing may be modified by one side if it turns out that they were based on Systec ignorance of material circumstance, for which Systec is not responsible.

2. If the customer is in default of acceptance or if customer negligently infringes any other duties to cooperate, Systec is entitled to demand compensation for the damage suffered by or in connection therewith, any additional expenses incurred by it are included.

3. The seller shall not be responsible for a delayed rendering of the service caused by measures taken within the framework of any industrial action, in particular strike or lockout or other circumstances for which Systec is not responsible, including Systec's sub-contractors. In these cases time limits and dates shall be extended or postponed as appropriate if it can be proven that such obstacles materially affect the services completion. This shall also apply if such circumstances arise after Systec already in default. If the extension or postponement of the time limits and dates exceeds a period of six

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weeks, both parties are entitled to withdraw from the contract with regard to the scope of service concerned thereby, with all other claims being excluded in such case.

4. If the customer sustains a damage as a result of Systec's default, the customer is entitled to demand a compensation, up to an amount of 0.3% for each full week of delay but no more than 5% of Systec price for the services performed on those goods which cannot, due to such delay, be utilised in time. Systec is in any event entitled to prove that no damage occurred, or that the damage that occurred was considerably lower. Further customer claims are excluded, except where the default is due to wilful intent, gross negligence or the breach of a material contractual obligation. If the customer stipulates a reasonable grace period during default, and if this period is not respected, the customer is entitled to withdraw from the contract, with all further claims being excluded and subject to the provisions of Sec. XIII.

IX. Acceptance and Passage of Risk

1. The customer is obliged to effect acceptance as soon as the completion of Systec services was notified. If the customer fails to accept the service within 2 weeks from notification on, acceptance shall be deemed performed to the extent that the notification pointed out this fictitious effect. Acceptance is even valid if the customer refuses acceptance without being entitled to do so.

2. The risk of a destruction or loss of or damage of the goods shall pass to the customer by shipment, by picking up the goods by the customer, by them being made available for pickup, or in cases of Sec. VIII (2) at the time at which the customer is in default of acceptance or debtor's delay.

3. If the customer fails to observe a date or time limit set by Systec for picking up any items, then Systec may from this date or from the expiry of this time limit on demand appropriate storage charges for the customer's items. In such case, Systec is also authorized to choose freely another suitable place for storing and to have the Items Provided insured, solely at the customer's cost and risk.

X. Reservation of Title, Lien

1. Systec reserves its title to all and any parts and auxiliary materials used by it until all open items under the business relationship have been closed. The customer is entitled, in the ordinary course of business, to dispose the item on which Systec services were performed; in such case, the claim

arising in connection with such disposal shall be deemed assigned to Systec in a proportion that corresponds to the relationship between the value of Systec services secured by the extended reservation of title and the total value of the item disposed of.

2. Regarding all and any claims arising under the contract, Systec is entitled to a right of lien overall and any items owned by the customer which came in Systec possession. This right of lien may also be asserted in connection with claims based on work previously performed, delivered spare parts or other services rendered related to the Items Provided. The right of lien shall apply to other claims arising from the business relationship if these are undisputed or have been recognized by declaratory judgment.

XI. Warranty Claims and Inspection of Goods

1. Systec gives a warranty for all and any defects existing at the time of the passage of risk except where such defect comes from any circumstance for which the customer is responsible; this shall apply in particular with regard to the parts provided by the customer.

2. Systec does not give a warranty for the preservation of the prescribed mass of the Items Provided.

3. The customer shall have no claims based on defects where the Items Provided were improperly modified by the customer or by any third parties without prior written consent or if the Items Provided are used or processed irrespectively of the defect.

4. Moreover, no claims based on defects shall exist for any differences or damage attributable to any missing, incorrect, incomplete or inaccurate information or treatment specifications which Systec designated as being unsuitable prior to performing the order provided by the customer when placing the order; for any damage attributable to the fact that the goods provided were unsuitable (faulty materials, deviations from measurements, surface treatments, processing residues or other foreign objects, defects due to workmanship, improper heat treatment, rust stains, nonremovable residues, soldered joints etc.); this shall apply only if the fact that the Items Provided were unsuitable for coating was not obvious to Systec for the becoming evident of any stains or other faults that were not visible prior to coating, owing to the heightening of contrast in the coating

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process; for any reduction in corrosion resistance of stainless steel caused by coating; for the corrosion of the coatworkpiece combination in an electrolytic environment; this only applies if the customer has not advised Systec writing prior to the conclusion of the contract of the electrolytic environment prevailing at the place where the Items Provided and to be coated are to be deployed.

5. Unless expressly stated in order confirmation, Systec shall in particular not be liable for the coated Items Provided being suitable for any other use than the customary one or any other expected uses.

6. The defects shall be removed by subsequent performance in the form of a subsequent improvement or new production at Systec. In the event of such subsequent performance, all and any expenses (transport, cost of travel, work and materials) required to be incurred to remove the defects shall be borne by Systec unless such costs are increased owing to the fact that the Items Provided were taken to a place other than the place of performance. If a subsequent performance is impossible or has failed for technical reasons, or if subsequent performance is not rendered within a reasonable period of time stipulated by the customer then the customer has a right of price reduction. A withdrawal from the contract is not admissible other than for material defects for which Systec is responsible. In multiple delivery contracts, only a partial withdrawal may be considered, relating to the defective partial delivery, unless adherence to the contract as a whole is unreasonable. Any further claims of whatever kind are excluded, notwithstanding Sec. XIII.

7. The customer's claims based on defects are subject to the customer examining the delivered Items Provided pursuant to Sec. 377 of the German Commercial Code [Handelsgesetzbuch]. Obvious defects shall be immediately notified within 3 working days from delivery but hidden defects, immediately upon their discovery being discovered. Such notifications of defects shall be made in writing, with the defect being specified. Claims based on defects become statutebarred one year from the passing of the risk.

8. If any claims resulting from defects are being asserted with regard to coated wearing parts, Systec's liability for defects shall not exist in the case of normal tear and wear. In case of doubt, it's the customer's obligation to show that the event is not usual tear and wear.

9. Prior to shipment, Systec shall examine the coated goods to the customary extent. If the customer requires more detailed examinations, this shall be separately agreed and invoiced to the customer. Goods with faulty functional surfaces will be separated out and marked by a red "faulty" ribbon. No coating services will be invoiced for these goods.

10. Any liability is limited to the coating service by Systec, but not for the delivered raw products that are to be coated and their possible defectiveness at the time before the coating process was started. In addition, Systec assumes no liability for the use and handling of the coated products by the customer. In general any liability is limited to the amount of coating costs of Systec.

XII. Liability Arising from Warranty of Title

Systec's liability arising from warranty of title shall be governed by Sec. XI and the following provisions:

1. Systec 's liability for any infringements of industrial property rights in connection with the utilisation of the coated Items Provided in any industrial processes or their conditions of utilisation, or in connection with the joining of the coated Items Provided to any other products, or their use with any other products, is excluded.

2. To the extent that the combination coat-Item Provided infringes any industrial property fights, Systec shall be liable only if such infringement was apparent for Systec on the basis of the information on the Item Provided submitted by the customer upon the conclusion of the contract.

3. In the event of any defects in title, Systec shall be entitled, in addition to its rights under Sec. XI

- to obtain the required licences of the infringed industrial property fights;
- or to remedy the infringement caused by the coated Item Provided by providing a coated Item Provided and modified to a reasonable degree for the customer (i.e. coating with another coat which is as suitable).

4. Subject to Sec. XIII, any further claims of any kind are excluded.

5. The customer is obliged to notify Systec immediately in writing of any claims asserted by third parties and to reserve the right for Systec to perform all and any defensive measures and settlement negotiations.

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XIII. Liability

1. The customer may not assert any further claims for compensation in excess of the claims granted to it in these Terms and Conditions, in particular neither claims for damages, nor claims arising from any non-contractual liability (with the exception of claims covered by Sec. 1 and 4 of the German Product Liability Act [Produkthaftungsgesetz]), nor any other rights relating to any disadvantages in connection with the contractual performance, regardless of the legal ground on which such claims may be founded. This exclusion of liability does not apply to the liability for any injury to body or life or health. The exclusion moreover does not apply if the damage was caused by Systec's wilful intent or gross negligence or the negligent infringement of a cardinal obligation or material contractual duty.

In the event of an infringement of a cardinal duty or material contractual duty, the duty to compensate shall be restricted to the foreseeable damage in each case. The customer shall advise Systec of any particular risks, any possible atypical damage and unusual damage amounts in writing prior to concluding the contract.

2. If Systec's liability is excluded or restricted in accordance with the above, the customer is obliged to hold Systec harmless from any third party claims upon first request.

XIV. Place of Jurisdiction

The place of jurisdiction for all and any disputes arising out of the contractual relationship shall be Gemünden/Main. Systec may also bring the case before the court where the customer has its place of business. Even for transactions abroad, solely German shall apply, with the UN Sales Convention being excluded. Should any provision of these General Terms and Conditions be or become invalid, this shall not affect the validity of any other provisions or agreements.

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