

## SECTION 1: SCOPE OF APPLICATION

All deliveries and associated services from CONICA AG, Industriestrasse 26, CH - 8207 Schaffhausen (hereinafter referred to as CONICA) are exclusively provided on the basis of these general terms and conditions (T&Cs). When ordering goods or associated services, these terms and conditions shall be deemed to be accepted, even if explicit agreement has not been given. References by the buyer to his business and/or purchase conditions are hereby rejected. Deviations from these T&Cs require explicit written acknowledgement from CONICA (e-mails are considered as the minimum written form; SMS, WhatsApp or similar digital media do not meet written form requirements).

## SECTION 2: TECHNICAL INFORMATION ON APPLICATION; INFORMATION ABOUT PRODUCT PROPERTIES; ORDERING TINTED MATERIALS

I. Technical information on application, processing guidelines, suggestions and recommendations that CONICA provides verbally and in writing to assist the customer or the processor are given in accordance with our respective state of knowledge. They are non-binding and do not constitute buyer rights or ancillary obligations from the business relationship. Our guidelines and recommendations do not release customers and processors from the obligation of satisfying themselves of the suitability of our products for their intended use.

II. Information about product properties does not constitute acceptance of a guarantee, if this is not explicitly referred to or agreed on as such in the individual contracts.

III. When ordering tinted materials on the basis of samples or colour cards, as well as repeats orders, whether the same colour or not, and/or for deliveries in several partial deliveries, please note that the structure and absorbency of the ground, the age of the reference material, environmental factors, viscosity, drying time, setting time and lighting conditions may change and/or affect the colour and that there may be slight variations with respect to the colour, structure, viscosity, drying time and setting time. This is usual in the industry, the customer is aware of it and it does not constitute a defect; unless the variation is unreasonable to the customer. For repeat orders of the same colour, the order number for the last colour order must be indicated. Colour comparisons must be made under the same conditions. Before application, the customer must check the accuracy of the colour shade on the item.

IV. All CONICA colour samples are manufactured using a printing process or in small lab quantities. Slight variations in colour to the original colours are caused by printing, technical effects of production and/or of the materials; the customer is aware of this and it does not constitute a defect; unless the variation is unreasonable to the customer.

V. Technical data sheets and safety data sheets pertaining to the respective product are integral parts of all agreements. Technical data sheets can be downloaded from CONICA's website [<https://www.conica.com>] via the customer/partner login.

## SECTION 3: PRICES AND ADDITIONAL TERMS: (A.O. CONTAINERS, SMALL QUANTITIES, TRANSPORTATION COSTS)

I. All prices are ex works (Incoterms® 2020) per unit plus any applicable VAT. Price changes are explicitly reserved.

II. Levies for volatile organic compounds (VOC) in Switzerland are not included in the price, unless otherwise agreed.

III. All containers are disposable, included in the price and do not have to be returned, unless otherwise agreed in writing. If returnable containers are delivered, these must be emptied by the customer within 30 days of arrival, and returned to CONICA in a clean condition at the customer's own cost and risk.

IV. A fixed surcharge is charged for small quantities based on cost and offer.

V. Any transportation costs are billed separately at cost, unless otherwise agreed. Shipments are generally delivered as cost-effectively as possible. For land transportation, the goods are transported stacked, provided that cargo securing and containers are permitted. Customer loading requirements are only accepted and taken into consideration if explicit instructions were given when ordering. Any additional costs may be charged to the customer. Transport surcharges for time-sensitive goods and express deliveries are either billed at cost or as a fixed fee, as quoted. If access or storage is difficult and/or there are waiting times, or if special transportation (e.g. mobile cranes or temperature-controlled transportation) is required, any additional costs are charged to the customer.

## SECTION 4: OFFERS AND ORDERS

I. Our offers are non-binding. Verbal agreements, commitments and guarantees given by our employees, sales agents or commercial agents - with the exception of segment managers and managing directors - are only binding when written confirmation has been given by CONICA.

II. Pro-forma invoices for stating the value of the goods are valid for a period of one (1) month after the date of issue. Once the specified period expires, CONICA has the right to renegotiate prices and conditions.

III. Buyer orders are binding after we have accepted them in writing, and constitute an acceptance obligation based on the order. CONICA reserves the right to insist on the original order. Changes to orders are not guaranteed, particularly in the frozen zone. The frozen zone for land transportation is 3 working days before planned loading, and 8 working days before planned loading for sea transportation. A charge may be incurred for changes made within the frozen zone, as quoted. Further downtime costs in a causal relationship may also be billed at cost.

IV. CONICA is entitled to refuse to fulfil the delivery duty at any time, until (advance) payment has been made, or a security deposit paid by the customer due to a credit limit being exceeded or due to claims being due from all existing business transactions. CONICA shall declare an appropriate reservation when a new customer order is placed, at the latest.

## SECTION 5: PAYMENT

I. Unless otherwise agreed, our invoices are due for payment without deduction within 14 days of invoicing. Payment is only considered to have been made when CONICA is able to access the money. If payment deadlines are not met, CONICA has the right to reclaim delivered goods or to withhold further deliveries, even if they have already been sent. If the buyer defaults on fulfilling its payment obligations, CONICA is also entitled to charge interest in the amount of 8% from the date of default. If the buyer defaults on payment, CONICA is further entitled to withdraw from the business relationship without setting any new grace period.

II. The buyer has no right to withhold payments or set off payments against other invoices as alleged counterclaims; unless the counterclaims due to the buyer are not disputed, and are confirmed by CONICA.

III. With respect to payment by cheque, delivery is only considered to be fully paid when the cheque has been paid into our bank account. A processing fee of EUR 50 per cheque is payable for payments by cheque, which is charged to the customer's account.

IV. Any bank or transfer fees must be borne by the customer, unless otherwise agreed.

V. CONICA reserves the right to share information regarding the customer's payment behaviour with third parties.

## SECTION 6: RETENTION OF TITLE

I. The following agreed retention of title serves as security for all existing current and future CONICA receivables from the buyer arising from this delivery relationship (including balance receivables from any current account relationship restricted to this delivery relationship).

II. Goods supplied by CONICA remain the property of CONICA until all secured receivables have been paid in full. The goods and the goods that supersede from them subject to the retention of title based on the following terms and conditions are hereinafter referred to as 'reserved goods'.

III. The buyer shall store the reserved goods for CONICA free of charge.

IV. The buyer is entitled to apply or process and sell the reserved goods until an enforcement event occurs (Paragraph IX.) in the usual course of business. Pledges and chattel mortgages are not permitted.

V. If the reserved goods are applied or processed by the buyer, it is agreed that application or processing is carried out in the name of and on the account of CONICA as the manufacturer, and that CONICA acquires direct ownership, or - if applying or processing with materials from several owners, or if the value of the applied or processed item is greater than the value of the reserved goods - co-ownership (fractional ownership) in the newly created item in the ratio of the value of the reserved goods to the value of the newly created item. If CONICA does not acquire such ownership, the buyer hereby assigns future ownership or - in the above-mentioned case of co-ownership for the newly created item - security to CONICA. If the reserved goods are combined or inseparably mixed to create a single item and if one of the other items is to be seen as the main item, CONICA shall transfer the co-ownership of the single item to the buyer pro rata in

the ratio specified in Paragraph I, provided that the main item belongs to it.

VI. If the reserved goods are resold, the buyer hereby assigns the resulting receivables against the acquirer to CONICA for security purposes - where CONICA's co-ownership in the reserved goods is pro-rated in accordance with the co-ownership share. The same shall apply to other receivables that supersede reserved goods or otherwise arise with respect to the reserved goods, such as insurance claims or claims from unauthorised handling in the case of loss or destruction. CONICA revocably authorises the buyer to collect receivables assigned to CONICA in its own name. CONICA may only revoke this collection authorisation in the event of enforcement (Paragraph IX.).

VII. If third parties have access to the reserved goods, with particular reference to seizure, the buyer must immediately inform them of CONICA's ownership, and notify CONICA of this so that it is able to enforce its property rights. If the third party is not in position to reimburse CONICA, the court or out-of-court costs that relate to this, CONICA's buyer shall be liable for this.

VIII. CONICA shall release the reserved goods and any superseding items or receivables, if their value exceeds the amount of the secured receivables by more than 20%. CONICA is entitled to select which of the items are to be released.

IX. If CONICA withdraws from the contract due to the buyer violating the contract (in the event of enforcement), with particular reference to defaults on payment, it is entitled to retain the reserved goods.

#### **SECTION 7: DELIVERIES AND TRANSPORTATION**

I. Deliveries are made ex works from Schaffhausen subject to a separate agreement, under Incoterms® 2020. Consequently, the risk of transport transfers to the buyer at the point of delivery, unless otherwise agreed (transfer of risk regulation for goods based on Incoterms® 2020).

II. The buyer bears the costs of downtime and maintenance time.

III. The agreed delivery periods and deadlines are always approximate if a set deadline has not been explicitly agreed as such in writing. Fixed unloading deadlines cannot be guaranteed. Liability for delivery delays, downtime and any other damage incurred, and in cases where agreed deadlines are breached, is hereby explicitly excluded, if permissible by law. In particular, liability for accidents is excluded.

IV. If the buyer collects goods from the delivery point, the buyer or his authorised representative must load the vehicle and comply with legal provisions, with particular reference to the transportation of dangerous goods.

V. For deliveries in tank vehicles and detachable tanks, the buyer must ensure that its tanks or other storage containers are in perfect technical condition, arrange for the filling tube to be connected to its system, and obligate the recipient to do so where necessary.

VI. Our obligations are limited to the operation of the vehicle's own facilities. If our employees assist with loading or filling, they shall be acting at the sole risk of the buyer.

#### **SECTION 8: NOTICE OF DEFECTS/GUARANTEE**

I. Damages in transit must be noted on the CRM/consignment note immediately upon receipt, recorded in writing, and directly reported to the deliverer (freight forwarder, rail, post) and CONICA.

II. Any complaints about transport damages, incorrect deliveries and visible damage after a proper review has been carried out (obvious defects) are only recognised by CONICA if this is reported to CONICA in writing within 8 working days of receiving the goods, and the type and extent of the damage is described in detail. Otherwise, the goods will be considered to have been accepted.

III. Hidden damage must be reported in writing immediately, within 8 working days of discovery at the latest, stating the type and extent of the damage. Otherwise, the goods will be considered to have been accepted.

IV. For damages that are reported late, any liability is explicitly excluded. If the goods are applied or processed without having been reviewed, all warranty claims shall be forfeited.

V. Buyer claims for defects and guarantee action due to defective goods lapse after six months of delivery to the buyer, unless otherwise regulated or otherwise regulated by law.

#### **SECTION 9: RETURNS**

The return of non-defective, non-stockable goods specific to the order and the customer is generally excluded. Goods may only be returned in perfect condition and in original packaging if prior notification and approval has been given by CONICA. You will be credited no more than 80% of the invoice amount. This credit must be used within 12 months. Any transportation costs arising from this will always be charged.

#### **SECTION 10: LIABILITY**

I. Where defects are noticed, a repair, replacement or price reduction will be made at CONICA's discretion. All other claims, with particular reference to claims for compensation for damages and consequential damages, as well as rescission of sale, are excluded, if legally permissible.

II. Any customer or end user of CONICA products is a legal person independent of CONICA, who is neither controlled by CONICA nor entitled to a legal claim. CONICA explicitly rejects any liability for damages that any party incurs, including associated and independent third parties, that are caused by actions, omissions, performance, non-performance, payment or non-payment by any natural or legal person, agent or commercial agent when using CONICA products, regardless of whether this relates to direct, indirect, consequential, financial or other damage. CONICA does not provide any assurance, declaration or guarantee with respect to the training, experience, competency, financial position or liquidity position of customers or end users of CONICA products.

III. CONICA offers product advice. However, only the buyer is responsible for selecting and applying the product. CONICA assumes no liability for this advice or any (billed) site supervision, such as for the usability of our products for the purpose intended by customers.

#### **SECTION 11: FORCE MAJEURE**

Should events and circumstances that are out of CONICA's control (such as natural occurrences and disasters, war, labour disputes, raw material and energy shortages, traffic and operational disruptions, damage caused by fire or explosions, orders from higher authorities) reduce the availability of goods in the facility from which CONICA obtains goods, or if suppliers are unavailable such that they are unable to meet their agreed obligations (proportionally taking into consideration other internal or external supplier obligations), CONICA (1.) shall be released from its agreed obligations for the period of the disruption and to the extent of its impact and (2.) shall not be obligated to procure the goods from third parties. Sentence 1 shall also apply if events and circumstances make the execution of the transaction uneconomical for CONICA on an ongoing basis, or if they apply to the latter's pre-supplier. If these events last longer than three (3) months, CONICA is entitled to withdraw from the contract, without the buyer having a right to compensation.

#### **SECTION 12: APPLICABLE LAW**

This contract is subject to substantive Swiss law (excluding the provisions concerning international private law and the United Nations Convention on Contracts for the International Sale of Goods concluded in Vienna on 11 April 1980 [CISG]).

#### **SECTION 13: PLACE OF JURISDICTION**

All disputes arising from or in connection with this contract, including the validity, breach or dissolution of it, shall be settled by the ordinary courts in the place where CONICA has its registered office.

#### **SECTION 14: DATA PROTECTION**

The customer hereby agrees that data given by him for the purposes of establishing and developing the contractual relationship will be collected, stored and used. CONICA complies with the regulations of Swiss federal law on data protection (SR 235.1, DSG).

Schaffhausen, December 2019.