

## **Soleras Advanced Coatings BV**

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### **GENERAL CONDITIONS OF SALE FOR SPUTTER PRODUCTS**

#### **ARTICLE 1 Application**

Unless otherwise agreed in writing by Soleras Advanced Coatings BV, these general conditions shall apply to present and future sales and services, irrespective of any different or contrary terms or conditions mentioned in the order form or in other documents from the Customer. The Customer expressly and irrevocably renounces vis-à-vis Soleras Advanced Coatings BV on its own present and future general conditions, even if it is stipulated that they are the only admissible ones.

#### **ARTICLE 2 Formation of contract**

All prices and other quotes are communicated without binding Soleras Advanced Coatings BV. They may be modified at any time without prior notice. The order issued by the Customer shall constitute the contract offer. All purchase orders, including those received or accepted by representatives or agents of Soleras Advanced Coatings BV, shall commit Soleras Advanced Coatings BV only after its written acceptance, in the form of an order confirmation. Such acceptance will be considered as the date of formation of the contract.

Unless otherwise stipulated, the prices are understood exclusive of VAT.

#### **ARTICLE 3 Delivery**

1. All sales are governed by the "Incoterms 2010".
2. All deliveries shall be made "FCA". In case the Customer and Soleras Advanced Coatings BV agree otherwise, the Customer shall bear all costs resulting, including but not limited to costs of transport, packing, insurance, taxes, import duties.
3. Dates of delivery are understood as target dates and are not binding.
4. Unless otherwise agreed, any delivery time shall run from the date of the formation of the contract.  
In case of non-delivery of the goods within three (3) months after the date stated, the Customer shall be entitled to invoke this delay to claim cancellation of the order, excluding all claims for damages, on the condition that it informs Soleras Advanced Coatings BV of its intention, by fax, letter, E-mail or any other means of telecommunication which provides Soleras Advanced Coatings BV with a document in writing, within fifteen (15) days after the three-month-period (3) has expired.  
Within fifteen (15) days after such notice, Soleras Advanced Coatings BV shall either accept this cancellation or commit itself to deliver the goods within thirty (30) days; if it does not comply with this last commitment, the Customer shall have the right to cancel the order by notifying Soleras Advanced Coatings BV in writing.
5. Should delay in delivery be caused by any of the circumstances mentioned in Article 12 and whether such cause occurs before or after the stated time of delivery, the parties will consult together to renegotiate the delivery date, as is reasonable, having regard to all the circumstances of the case.
6. If the Customer fails to accept the delivery on the contracted date or should a delay in delivery be caused by an act or omission (including without limitation changes in specification) of the Customer, the Customer shall nevertheless promptly make any payment as if the

equipment had been delivered. Soleras Advanced Coatings BV shall arrange for the storage of the equipment at the risk and cost of the Customer.

7. Soleras Advanced Coatings BV reserves the right to make a partial delivery of the goods mentioned on the order confirmation. In case of partial delivery, partial payment shall become due.

#### **ARTICLE 4 Acceptance - complaints – guarantee**

1. The conformity to the contract of the delivered goods and services is determined at the time of delivery.
2. The acceptance of the goods at the time of delivery covers all apparent defects.
3. The Customer must, in order to be validly made, submit any claim for apparent defects on delivery to Soleras Advanced Coatings BV within three (3) days following the delivery, by fax, letter, E-mail or any other means of telecommunication that provides Soleras Advanced Coatings BV with a document in writing.
4. Claims for hidden defects can only be taken into account if the defects appear within a twelve-month-period (12) following the delivery, and if they are notified to Soleras Advanced Coatings BV by fax, letter, e-mail or any other means of telecommunication that provides Soleras Advanced Coatings BV with a document in writing, within three (3) days following their discovery.  
In case of defects as stipulated in the Articles 4.3 and 4.4, the Customer shall give Soleras Advanced Coatings BV every opportunity of inspecting and remedying them.  
The Customer shall not destroy any defective goods until Soleras Advanced Coatings BV has given its written consent.
5. The Customer shall not return any defective goods without the prior and explicit consent of Soleras Advanced Coatings BV.
6. All reworking carried out by the Customer or at the Customer's request and at its expense, without the prior written agreement of Soleras Advanced Coatings BV, shall entail the loss of the guarantee.
7. Unless explicitly agreed in writing, Soleras Advanced Coatings BV does not guarantee that the goods meet the requirements of a specific use or process. Any specifications, descriptions and illustrations, which are included in the documentation of Soleras Advanced Coatings BV, do not bind Soleras Advanced Coatings BV and, unless otherwise instructed, do not constitute, directly or indirectly, part of the contract with the Customer.
8. Soleras Advanced Coatings BV undertakes to fulfill its obligations in good faith and with the required competence and care. The present guarantee is the only one that is given in this respect by Soleras Advanced Coatings BV, and consequently any other explicit or implicit condition and guarantee shall be excluded.

#### **ARTICLE 5 Liability**

1. Under the conditions stated herein, Soleras Advanced Coatings BV undertakes to remedy any defects which reduce the usefulness of the goods or their performance and which result from a defective design, material or treatment.  
If a defect is revealed as stipulated in the Articles 4.3

and 4.4, Soleras Advanced Coatings BV shall examine the possibilities to remedy the defect(s), or, at its own discretion to replace the defective goods.

Subsequently, the same conditions and provisions as the ones which applied for the initially delivered goods, will apply for the repaired or replaced parts.

2. Soleras Advanced Coatings BV shall under no circumstances be liable for defects caused by bad storage, handling by the Customer, abnormal use of the goods, or transformation of the goods by the Customer or due to climatic conditions. Furthermore, Soleras Advanced Coatings BV is not liable for defects in goods that were delivered by the Customer, or defects in any design or specifications, instructions, disassembling or readjustment from the Customer or stipulated by the Customer. Soleras Advanced Coatings BV's liability does not apply to non-durable-items, second hand material or spare-parts. The Customer undertakes to indemnify Soleras Advanced Coatings BV against any defect in any design or specification from the Customer, in particular if they are inconsistent with any legal regulations.
3. Soleras Advanced Coatings BV's liability does not apply to sputter targets. Soleras Advanced Coatings BV shall manufacture sputter targets according to their specifications. Soleras Advanced Coatings BV shall provide a certificate of conformity for each sputter target, certifying that the specifications are met.
4. The warranty shall apply only to defects appearing during normal use under the conditions of operation provided in the specifications. It does not cover defects arising from the Customer's faulty maintenance or from alterations carried out without Soleras Advanced Coatings BV's consent in writing, nor to defects arising from improper start-up by the Customer or from repairs carried out improperly by the Customer, nor does it cover deterioration occasioned by normal use.
5. Without prejudice to the above, the liability of Soleras Advanced Coatings BV for damages arising from the delivered goods or services, is in any case and even in case of gross negligence by Soleras Advanced Coatings BV, limited to the amount of the contract, i.e. the price of the goods to be delivered, to the exclusion of any other indemnification. Soleras Advanced Coatings BV will on no account be liable for indirect damages, such as loss of profit, production decrease, increased production costs, decrease in turnover, damages suffered by third parties, and in general any kind of consequential damage.
6. In case of resale of the goods, processed or otherwise, the Customer undertakes to indemnify Soleras Advanced Coatings BV at its first request, against any other claims or damages (suffered by third parties) for which Soleras Advanced Coatings BV would be liable, if and to the extent they exceed the amount stipulated in Article 5.7.
7. Without prejudice to the above, the law of the place of the Customer's registered office shall govern the liability of Soleras Advanced Coatings BV for bodily injury caused by the defective goods or services, unless this place is in the United States of America, in which case Belgian law shall prevail.
8. The Customer undertakes to immediately inform Soleras Advanced Coatings BV from the moment it becomes aware of a patent, which is infringed by the delivered goods. If a patent infringement claim is brought against the Customer due to the offer, import, storage, sale and/or use of the goods of Soleras Advanced Coatings BV, the Customer shall immediately inform Soleras Advanced Coatings BV in writing and shall allow Soleras Advanced Coatings BV to take over the defense in the proceedings. If the Customer, by virtue of a final judgment for patent infringement by the goods delivered by Soleras Advanced Coatings BV, is ordered to pay for the damages, Soleras Advanced Coatings BV may only be applied by the Customer to compensate this indemnification partially, i.e. for an amount equal to the sales price paid by the Customer for the infringing goods, delivered to him during the last six (6) months preceding the summons. Soleras Advanced Coatings BV does under no circumstances assume any liability or responsibility for any

extraordinary use or special application which the Customer or a third person makes of the delivered goods and which may infringe any rights of third parties.

Moreover, Soleras Advanced Coatings BV cannot be held liable for infringements of a patent which was unknown to Soleras Advanced Coatings BV but of which the Customer was aware.

Soleras Advanced Coatings BV is owner of a US patent (US 5,591,314) and of corresponding patent rights on an apparatus to releasably affix a cylindrical target to a spindle inside a vacuum apparatus. Because of these patent rights and because of quality reasons the cylindrical targets supplied by Soleras Advanced Coatings BV are for single use only.

#### **ARTICLE 6 Conditions for assembly, start-up, repair work and after sales servicing**

1. Unless otherwise agreed, conditions prerequisite to assembly and any repair works are as follows:
  - the work will not be carried out on sites or circumstances deemed by Soleras Advanced Coatings BV to be unhealthy or dangerous;
  - any equipment, consumable stores, standard assembly equipment and other needed materials (such as water, energy, air, ...) will be available to Soleras Advanced Coatings BV at the time and place indicated in the contract (or promptly placed to hand on the occasion of repair work) and, unless otherwise agreed, provided free of charge to Soleras Advanced Coatings BV;
  - the Customer will provide Soleras Advanced Coatings BV (free of charge unless otherwise agreed) with closed or guarded premises on or near the site as a protection against theft and deterioration of the equipment and tools required for the work, and of the clothing of Soleras Advanced Coatings BV's employees.
2. Should the prerequisite conditions not prevail and the circumstances resulting from such absence are such that it would be unreasonable to require Soleras Advanced Coatings BV to proceed with the works, then Soleras Advanced Coatings BV may, without prejudice to its rights under the contract, refuse to commence assembly, start-up or any repair work.
3. The Customer shall promptly and in any event not later than the formation of the contract notify Soleras Advanced Coatings BV in full of the safety regulations valid on the site where the work will be done. Furthermore, if the Customer requests that assembly, start-up and/or repair work be carried out by workforce engaged by Soleras Advanced Coatings BV, the Customer shall promptly alert these workers to any particular hazards, and notify them of any special safety instructions or drill applicable on the site. If breaches of these regulations by the workforce engaged by Soleras Advanced Coatings BV come to notice of the Customer, it shall inform Soleras Advanced Coatings BV in writing forthwith, and may forbid persons guilty of such breaches entry to the site.
4. The Customer shall not be entitled to use Soleras Advanced Coatings BV's employees on any work unconnected with the subject/matter of the contract without previous written consent of Soleras Advanced Coatings BV. If Soleras Advanced Coatings BV so consents, it shall not be under any liability in respect of such work, and the Customer shall be responsible for the safety and well-being for Soleras Advanced Coatings BV's employees while employed on such work.
5. Charges payable by the Customer:
  - the traveling expenses incurred by Soleras Advanced Coatings BV in respect of its employees and the transport of their instruments and personal effects (within reasonable limits) in accordance with the specified method and class of travel specified in the contract or as otherwise agreed;
  - the living expenses, including any daily or other appropriate allowance, of Soleras Advanced Coatings BV's employees during absence from their homes including non-working days and holidays;
  - time worked at the agreed rate, it being understood

- that overtime and work on holidays and at night will be charged at the special rates mentioned in the contract;
- time necessarily spent on:
    - preparation and formalities incidental to the outward and homeward journeys;
    - the outward and homeward journeys;
    - daily travel between the lodgings and the site;
    - waiting when work is prevented by circumstances for which Soleras Advanced Coatings BV is not responsible under the contract;
    - any taxes or dues levied in the country where the work takes place in respect of any invoice payable to Soleras Advanced Coatings BV.
6. Interruption of work:  
If the work is interrupted by reason of an event or a cause for which Soleras Advanced Coatings BV is not responsible:
- the Customer is entitled to send home Soleras Advanced Coatings BV's staff, but in this case the Customer shall pay the expenses resulting;
  - Soleras Advanced Coatings BV is entitled to recall its staff at the expense of the Customer if the interruption of work exceeds two weeks;
  - if Soleras Advanced Coatings BV's staff is sent home or recalled, the contract is not terminated and its fulfillment is merely suspended until the Customer has required the return of Soleras Advanced Coatings BV's staff to the site by giving at least one month's notice or otherwise as may be agreed between Customer and Soleras Advanced Coatings BV.
7. If Soleras Advanced Coatings BV so requires in due time, the Customer shall make available to Soleras Advanced Coatings BV in due time and free of charge such skilled and unskilled labour as is provided for in the contract and, within reasonable limits, any additional unskilled labour required, even if not provided for in the contract.
8. Soleras Advanced Coatings BV shall for a period of 10 years make all normal efforts against payment of normal prices to:
- give technical support to the customer for the delivered equipment;
  - deliver - during that same period - spare parts which Soleras Advanced Coatings BV made itself on drawings of its own.

#### **ARTICLE 7 Taking-over of assembly, start-up or repair work on machines or installations (the Work)**

1. As soon as the Work has been completed in accordance with the contract and has been accepted without any defect having been found for which Soleras Advanced Coatings BV is responsible, the Customer shall be deemed to have taken over the Work so far as Soleras Advanced Coatings BV is concerned. The Customer shall thereupon issue a certificate (herein called a "taking-over certification") in which it shall certify the date on which the Work was completed and the fact that the Work satisfactorily passed the tests.
2. If the Customer does not take the steps necessary for taking-over of the Work, the Work shall be deemed to have been taken over and a written notice to that effect may be given by Soleras Advanced Coatings BV to the Customer.
3. If by reason of difficulties encountered by the Customer it becomes impossible to proceed to take over the Work, the Work shall be considered as taken over nonetheless six months after delivery "ex-works" for assemblies or start-up and three months from completion of repair-work.
4. In cases where machines and installations are assembled and/or started up by the Customer, the equipment shall be considered to be taken over at the moment of delivery.

#### **ARTICLE 8 Liability for personal injury and damage to Property by personnel of Soleras Advanced Coatings BV during assembly and repair work on site**

1. It is expressly agreed that the Customer shall have no claim in respect of personal injury or of damage to property

- arising after taking over, nor for loss of profit, unless it is shown from the circumstances of the case that Soleras Advanced Coatings BV has been guilty of gross misconduct.
2. "Gross misconduct" does not comprise any and every lack of proper care or skill, but means an act or omission on the part of the personnel of Soleras Advanced Coatings BV implying either a failure to pay regard to serious consequences which a conscientious contractor would normally foresee as likely to ensue, or a deliberate disregard of any consequences of such act or omission.
  3. In the event of personal injury or damage to property occurring before all the work has been taken over, Soleras Advanced Coatings BV's liabilities shall be determined as follows:
    - (a) Soleras Advanced Coatings BV shall at its own expense repair any loss or damage to the equipment during the execution of the Work only if such loss or damage is caused by an act or omission of Soleras Advanced Coatings BV.
    - (b) In respect of damage to the Customer's property other than the equipment on which the work is performed, Soleras Advanced Coatings BV shall indemnify the Customer to the extent that such damage was caused by Soleras Advanced Coatings BV or by failure of equipment or tools provided by Soleras Advanced Coatings BV for the purposes of the work only if the circumstances show that Soleras Advanced Coatings BV failed to use proper skill and care.
      - (c1) In respect of personal injury, the respective liabilities of the Customer and of Soleras Advanced Coatings BV towards the injured person shall be governed by the law of the country where the injury occurred;
      - (c2) If the injured person brings a claim against the Customer, Soleras Advanced Coatings BV shall indemnify the Customer against such claim but only to the extent that the injury was due to any causes mentioned in subparagraph (b) hereof;
      - (c3) If the injured person brings a claim against Soleras Advanced Coatings BV, the Customer shall, to the extent permitted by the law of the country where the injury occurred, indemnify Soleras Advanced Coatings BV against such claim save to the extent that, by the operation of subparagraph (c.2) hereof, Soleras Advanced Coatings BV would have been liable to indemnify the Customer had the claim been brought against the Customer.
    - (d) In respect of damage to property of third parties, the provisions of sub-paragraph (c.1,2,3) hereof shall apply mutatis mutandis.
    - (e) The provisions of this paragraph concerning the liability of the parties to the contract shall also apply to their respective employees. However, in case of additional labour furnished by the Customer under Article 6.7, Soleras Advanced Coatings BV shall be liable in respect of its orders and instructions only if they were substantially incorrect, badly expressed or given to a person deemed to be unqualified.
  4. In order to exercise its rights under sub-paragraphs (c.1,2,3) and (d) of Article 8 paragraph 3, the party against whom a claim is made must notify the other party of such claim and must permit the other party, if the other party so wishes, to conduct all negotiations for the settlement of such claim and to act in its stead or, to the extent permitted by the law of the country where the action is brought, to join in such litigation.
  5. Any limitation of the indemnities payable by either party by virtue of this Article shall be as stated in the order confirmation.

#### **ARTICLE 9 Payment and security**

1. All invoices are payable at the place, time and under the conditions stipulated in the order confirmation or invoice. Unless otherwise determined, the payment must reach Soleras Advanced Coatings BV before the thirtieth

- (30th) day of the month following the invoice date. Except if the Customer is in possession of a legal decision, which is immediately enforceable, the Customer is not entitled to reduce the invoice amounts of Soleras Advanced Coatings BV, or to compensate invoices of Soleras Advanced Coatings BV with amounts which are claimed by the Customer for any reason whatsoever.
2. Subject to any other remedy available to Soleras Advanced Coatings BV, any invoice or part thereof which is not paid on its due date shall from the next day bear interest, automatically and without prior notice, at the reference rate plus seven (7) percentage points and rounded to the higher half percentage point. The reference rate shall be the interest rate applied by the European Central Bank to its most recent main refinancing operation carried out before the first calendar day of the half-year in question. Furthermore, any other outstanding invoice of the Customer shall become due immediately at that moment and Soleras Advanced Coatings BV shall be entitled to suspend the performance of any current contracts without prior notice.
  3. Moreover, any amount which is unpaid on its due date shall be increased, by right and without notice, by a fixed amount, payable as liquidated damages for administrative costs caused by recovery measures, and equal to ten percent (10 %) of the unpaid amount.
  4. Furthermore, in case of non-payment within one (1) month following the due date, Soleras Advanced Coatings BV is entitled to terminate any contract by notifying the Customer by registered letter, which shall take effect on the day of its sending.
  5. Soleras Advanced Coatings BV is entitled to require security for payment, at its own discretion and to its satisfaction. If Soleras Advanced Coatings BV has serious doubts about the solvency of the Customer, or if the Customer does not provide satisfactory security, Soleras Advanced Coatings BV is entitled:
    - (a) to suspend any further deliveries or services to the Customer under the current contracts;
    - (b) to take, with regard to the goods already shipped, any measures required to prevent the goods from coming into the possession of the Customer and to secure the rights of Soleras Advanced Coatings BV.
  6. Any advance payment by the Customer will be deemed to be an installment payment and will not be deemed to be a guarantee deposit.

#### **ARTICLE 10 Retention of title**

1. The delivered goods shall remain the property of Soleras Advanced Coatings BV until the invoice is fully paid or until the cheque for payment or the bill of exchange, issued in payment of the invoice, is cashed. The same applies in case of partial deliveries and partial payments. In case of continuous business relations, the retention of title applies vis-à-vis any delivery until the current account balance has been settled.
2. Notwithstanding the above, the risks of goods pass to the Customer at the time of delivery of the goods.
3. As far as possible under the applicable law, the retention of title also applies for delivered goods that were transferred to third parties.  
If pursuant to the law, the retention of title disappears with the transfer of the goods to third parties, the Customer shall, at the simple request of Soleras Advanced Coatings BV, transfer to Soleras Advanced Coatings BV all claims, which the Customer has on the acquirer of the goods. Soleras Advanced Coatings BV undertakes not to collect these claims to the extent that the Customer correctly meets its commitment to pay.
4. As far as possible under the applicable law, the retention of title also applies for delivered goods, which are transformed into other goods.  
The transformation of the goods, to which the retention of title applies, is carried out for the account of Soleras Advanced Coatings BV.  
If the goods with retention of title are transformed with other goods not belonging to Soleras Advanced Coatings BV, Soleras Advanced Coatings BV acquires the co-

ownership of the new goods in the proportion of its share in the goods with retention of title, calculated on the total value of the new goods.

#### **ARTICLE 11 Subcontracting**

Soleras Advanced Coatings BV is entitled to completely or partially contract out the manufacturing of the goods.

#### **ARTICLE 12 Force majeure**

1. Neither party shall be held liable or deemed to be in default hereunder if prevented from performing its obligations by reason of "Force Majeure" or by reason of any unavoidable cause or circumstances beyond its control, including, but not restricted to, strikes, fires, earthquakes, war, revolution, lock-outs, epidemics, acts of enemies, hostilities, insurrection, acts of God or acts of any government.
2. The party wishing to claim relief shall notify the other party in writing without delay following inception (and on the cessation) of the said circumstances.
3. The effects of the said circumstances, so far as they affect the timely delivery by Soleras Advanced Coatings BV, are defined in Article 3.

If Soleras Advanced Coatings BV, in case of force majeure, should not be able to comply with the requirements of all of its Customers, Soleras Advanced Coatings BV shall be entitled to freely allocate the available production capacity amongst its Customers, without owing any indemnification to its other Customers.

#### **ARTICLE 13 Price revision**

1. In case the manufacturing of the goods is suspended at the request of the Customer or due to the inaccuracy or the impreciseness of the instructions of the Customer, or in case of modification of any specification after the order confirmation, any price given by Soleras Advanced Coatings BV may be increased in order to cover for any supplementary costs incurred by Soleras Advanced Coatings BV.
2. The Customer will pay or compensate Soleras Advanced Coatings BV for any costs and charges relating to letters of credit, the transfer of money to Soleras Advanced Coatings BV and the issuing of any shipping document.
3. After notification to the Customer, Soleras Advanced Coatings BV is at all times entitled to revise a price in order to cope with an increase of labour costs, material, energy or other manufacturing and transport costs.

#### **ARTICLE 14 Confidential information**

Any specification, drawing, technical description and data, accompanying the price offer made by Soleras Advanced Coatings BV or delivered to the Customer within the framework of the contract, is confidential. The Customer undertakes to respect this confidentiality and not to reveal this information to any third parties without the prior written authorization of Soleras Advanced Coatings BV and to use this information solely for contractual purposes. No stipulation in the present article will prevent Soleras Advanced Coatings BV from delivering goods or services to third parties or to make a price offer, which are similar to or which aim at achieving the same result as the goods or services delivered under the present contract.

#### **ARTICLE 15 Cancellation of the order**

No order placed by the Customer and accepted by Soleras Advanced Coatings BV shall be cancelled or modified by the Customer without the express authorization in writing by Soleras Advanced Coatings BV. In that case, the Customer will be held liable for any loss (including loss of profit), damages and costs, suffered and made by Soleras Advanced Coatings BV pursuant to said cancellation or modification of the order. The loss of profit in case of cancellation of the order is fixed at fifty (50) percent of the price for the order.

#### **ARTICLE 16 Jurisdiction and applicable law**

1. All sales are governed by Belgian law, with the exception, however, of the issues mentioned in the

Articles 5.6, 5.7 and 10, which are governed by the law of the place of the registered office of the Customer.

2. The Convention of Vienna relating to International Sales (1980) is not applicable to any agreement between Soleras Advanced Coatings BV and the Customer.
3. Any dispute concerning the validity, the interpretation and the performance of the general conditions of the sale of goods and/or related service shall be finally be settled by the competent Court of Ghent, Belgium.

## FRANCE

Replace GENERAL CONDITIONS OF SALE FOR SPATTER PRODUCTS, Article 7., with the following :

1. Les marchandises livrées restent la propriété de Soleras Advanced Coatings BV jusqu'au paiement intégral de la facture ou, si celle-ci est réglée par chèque ou traite, jusqu'au moment de leur encaissement. La même règle sera d'application en cas de livraisons et de paiements partiels. Ainsi, le défaut de paiement de l'une quelconque des échéances ou sommes qui sont dues à Soleras Advanced Coatings BV dans les délais prévus, pourra entraîner la revendication d'une partie ou de la totalité des marchandises à concurrence des sommes qui sont dues, qu'elles soient échues ou à échoir.
2. Nonobstant ce qui est dit au point 1 ci-dessus, les risques des marchandises vendues se transmettent au Client au moment de la livraison des marchandises.
3. Le Client est autorisé à revendre les marchandises dans le cadre de son exploitation normale. Dans ce cas, la réserve de propriété s'applique également aux marchandises livrées qui ont été transférées à des tiers. Dans le cas où la revendication des marchandises auprès de l'acquéreur s'avérerait impossible, le Client, sur simple demande de Soleras Advanced Coatings BV, lui transférera toutes les créances qu'il possède envers l'acquéreur des marchandises. Soleras Advanced Coatings BV s'engage toutefois à ne pas recouvrer les créances dans la mesure où le Client exécute correctement ses obligations de paiement.
4. La réserve de propriété s'applique également aux marchandises livrées qui sont transformées en d'autres marchandises. Les modifications apportées aux marchandises sous réserve de propriété sont réputées effectuées pour le compte de Soleras Advanced Coatings BV. Ainsi, Soleras Advanced Coatings BV conserve la propriété exclusive des marchandises transformées jusqu'au paiement du prix tel que défini au point 1 ci-dessus. Toutefois, si les marchandises sous réserve de propriété sont façonnées avec d'autres marchandises n'appartenant pas à Soleras Advanced Coatings BV, Soleras Advanced Coatings BV acquiert la copropriété des nouvelles marchandises au prorata de la valeur des marchandises dont il s'est réservé la propriété par rapport à la valeur totale des nouvelles marchandises. Le droit de propriété porte également sur tous les biens de même espèce et de même qualité que les marchandises se trouvant en nature dans l'entrepôt du Client. Dans le cas où les marchandises transformées ou façonnées auraient été transférées à des tiers, le Client, sur simple demande de Soleras Advanced Coatings BV, lui transférera toutes les créances qu'il possède envers l'acquéreur des marchandises. Soleras Advanced Coatings BV s'engage toutefois à ne pas recouvrer les créances dans la mesure où le Client exécute correctement ses obligations de paiement.
5. En cas de reprise des marchandises par Soleras Advanced Coatings BV, les acomptes versés par le Client resteront acquis définitivement à Soleras Advanced Coatings BV.
6. En cas de saisie-arrêt, ou toute autre intervention d'un tiers sur les marchandises, le Client devra impérativement en informer Soleras Advanced Coatings BV sans délai afin de lui permettre de s'y opposer et de faire valoir son droit de propriété.
7. Il est expressément prévu que l'ensemble des dispositions de la présente clause s'appliquent même en l'absence de procédure collective ouverte contre le Client.

## GERMANY

Replace GENERAL CONDITIONS OF SALE FOR SPATTER PRODUCTS, Article 7., with the following :

1. Sofern der Kunde Unternehmer im Sinne des § 14 BGB, Sondervermögen des öffentlichen Rechts oder juristische Person des öffentlichen Rechts ist, behalten wir uns das Eigentum an der gelieferten Ware sowie an den etwa aus Ihrer Verbindung, Vermischung oder Verarbeitung entstehenden Sachen bis zur Erfüllung unserer sämtlichen gegenwärtigen aus der Geschäftsverbindung gegen den Besteller/Käufer zustehenden Ansprüche vor. In allen anderen Fällen behalten wir uns das Eigentum an der gelieferten Ware sowie an den etwa aus Ihrer Verbindung, Vermischung bzw. Verarbeitung entstehenden Sachen bis zur vollständigen Bezahlung sämtlicher Forderungen gegen den Kunden, die wir im Zusammenhang mit dem Kaufgegenstand haben oder erwerben vor. Schecks, Wechsel und Zessionen gelten erst mit der baren Einlösung als Zahlung.
2. Der Besteller/Käufer ist zur getrennten Lagerung und Kennzeichnung der unter Eigentumsvorbehalt stehenden Waren verpflichtet. Eine etwaige Verbindung, Vermischung oder Verarbeitung (im folgenden: Verarbeitung) nimmt der Besteller/Käufer für uns vor, ohne dass für uns hieraus Verpflichtungen entstehen. Verarbeitet, verbindet oder vermischt (im folgenden: verarbeitet) der Besteller/Käufer unsere Vorbehaltsware mit in seinem Eigentum stehenden anderen Artikeln, so steht uns das Eigentum an den neuen Sachen alleine zu. Verarbeitet der Besteller/Käufer unsere Vorbehaltsware mit anderen Artikeln, die nicht in seinem Eigentum stehen, so steht uns das Miteigentum an den neuen Sachen im Verhältnis des Wertes der verarbeiteten Vorbehaltsware zu den anderen Artikeln zur Zeit der Be- und Verarbeitung zu. Seine durch Verarbeitung der gelieferten Ware mit anderen Sachen etwa entstehenden Miteigentumsanteile überträgt der Besteller/Käufer schon jetzt auf uns. Der Besteller/Käufer wird die Sachen als Verwahrer besitzen. Er haftet für eigenes vorsätzliches und fahrlässiges Verhalten, ebenso für das seiner gesetzlichen Vertreter und der Personen, deren er sich zur Erfüllung seiner Verbindlichkeiten bedient. Der Besteller/Käufer darf die gelieferten Waren und die aus ihrer Verarbeitung entstehenden Sachen nur im ordnungsgemäßen Geschäftsverkehr veräußern. Sicherungsübereignungen, Verpfändungen und andere unsere Rechte gefährdende Verfügungen sind nicht gestattet.
3. Die ihm aus der Weiterveräußerung oder aus einem sonstigen, die Vorbehaltsware betreffenden Rechtsgrund zustehenden Forderungen, auch solche auf Schadensersatz wegen Beschädigung oder Zerstörung der Vorbehaltsware, gleichgültig, ob es sich um vertragliche oder gesetzliche Ansprüche gegen den Schädiger, Versicherungsunternehmen oder sonstige Dritte handelt und auf Ersatz gezogener Nutzungen, tritt der Besteller/Käufer schon jetzt an uns in voller Höhe ab. Wir nehmen diese Abtretung an. Der Besteller/Käufer ist nicht berechtigt, die Vorbehaltsware an Dritte zu veräußern, mit denen er ein Abtretungsverbot vereinbart hat.
4. Wird die Vorbehaltsware vom Besteller/Käufer zusammen mit eigenen oder Waren Dritter in unverarbeitetem Zustand verkauft, tritt der Besteller/Käufer die aus der Weiterveräußerung resultierende Forderung an uns in Höhe des Wertes der Vorbehaltsware ab.
5. Erlangen wir durch Verarbeitung der Vorbehaltsware mit Waren anderer Lieferanten Miteigentum an dem neuen Gegenstand, erfasst die Abtretung bei Weiterveräußerung den unserem Miteigentumsanteile entsprechenden Forderungsanteil, soweit dieser sich ermitteln lässt, anderenfalls den Rechnungswert unserer verarbeiteten Vorbehaltsware.
6. Erfolgt die Verarbeitung im Rahmen eines Werkvertrages oder Werklieferungsvertrages, tritt der Besteller/Käufer an uns ebenfalls im Voraus den anteiligen Werklohnanspruch, der dem Wert der verarbeiteten

- Vorbehaltsware entspricht, ab.
7. Werden die vorgenannten Forderungen vom Besteller/Käufer in ein Kontokorrentverhältnis eingebracht, so werden hiermit die Kontokorrentforderungen in voller Höhe an uns abgetreten. Nach Saldierung tritt an ihrer Stelle der Saldo, der bis zur Höhe des Betrages als abgetreten gilt, der die ursprünglichen Kontokorrentforderungen ausmachte. Bei Beendigung des Kontokorrentverhältnisses gilt dies entsprechend für den Schlußsaldo.
  8. Solange der Besteller/Käufer seinen Verpflichtungen nachkommt, wird die Abtretung als stille Abtretung behandelt und der Besteller/Käufer zur Einziehung der Forderung ermächtigt. Der Besteller/Käufer hat auf die abgetretene Forderung eingehende Beträge gesondert zu verbuchen und gesondert aufzubewahren.
  9. Für den Fall, dass die vom Besteller/Käufer im Rahmen der Weiterveräußerung der Vorbehaltsware geschlossenen Verträge unwirksam oder nichtig sind, tritt der Besteller/Käufer bereits jetzt die ihm anstelle der abgetretenen vertraglichen Ansprüche zustehenden gesetzlichen Ansprüche insbesondere Bereicherungsansprüche in demselben Umfang ab.
  10. Sofern und soweit die Registrierung und/oder die Erfüllung anderer Erfordernisse Voraussetzung für die Wirksamkeit des Eigentumsvorbehaltes sind, ist der Besteller/Käufer verpflichtet, auf seine Kosten alle hierzu notwendigen Handlungen unverzüglich vorzunehmen und alle erforderlichen Mitteilungen zu machen.
  11. Wird im Zusammenhang mit der Bezahlung des Kaufpreises durch den Besteller/Käufer eine wechselfähige Haftung des Verkäufers begründet (Scheck/Wechselverfahren), so erlischt der Eigentumsvorbehalt nicht vor Einlösung des Wechsels durch den Besteller/Käufer als Bezogenen.
  12. Übersteigt der Wert der Sicherungen unsere Forderungen um mehr als 20%, so ist der Besteller/Käufer berechtigt, insoweit die Freigabe von Sicherungen zu verlangen.
  13. Zugriffe Dritter auf die Vorbehaltsware oder die abgetretenen Forderungen hat der Besteller/Käufer uns sofort unter Übergabe der für die Intervention notwendigen Unterlagen anzuzeigen. Die Kosten der Intervention trägt der Besteller/Käufer.
  14. Die Kosten des Rücktransportes der Vorbehaltsware trägt der Besteller/Käufer.
  15. Für den Fall, dass Verbindlichkeiten des Besteller/Käufers durch die Teilnahme am Lastschriftverfahren beglichen werden, bleiben alle unsere Rechte aus dem vorstehend geregelten Eigentumsvorbehalt solange bestehen, bis ein Widerruf der Lastschrift nicht mehr möglich ist, sofern unsere Rechte nicht aufgrund der vorstehenden Regelungen ohnehin bereits bestehen bleiben.