

# GENERAL TERMS AND CONDITIONS

General Terms and Conditions of:

**B.E.S.D. Benelux B.V.**

Industrial zone: "De Kempen"

Oude Graaf 3b

6002 NL Weert

The Netherlands

Chamber of Commerce No.: 50025619

(AS 224-20)

## ARTICLE 1: APPLICABILITY - DEFINITIONS

1. These General Terms and Conditions apply to any offer from us and to all our agreements of sale/purchase we conclude with you.
2. If (a part of) a provision is void or annulled, the other provisions of these General Terms and Conditions remain in force.
3. In the event of a deviation between these General Terms and Conditions and a translation hereof, the Dutch text applies.
4. These General Terms and Conditions also apply to repeat or partial orders.
5. All provisions in these General Terms and Conditions have been written for both our corporate purchasers and consumers. We use the term "consumer" when a provision contains a deviation/addition which applies only to consumers. A "consumer" is a natural person not acting in the pursuit of his professional or commercial activity.
6. We also use the following terms in these General Terms and Conditions:
  - a. offer: any offer from us, whether or not in the form of a written quotation;
  - b. in writing: by letter, e-mail, fax, or any other form of communication that can be equated with this, such as WhatsApp messages;
  - c. documents: both physical and digital documents, for example advices, calculations, sketches, designs, drawings, reports and suchlike to be created or provided by you or us;
  - d. information: both the aforementioned documents and other (oral) data;
  - e. items: our items to be delivered from assortment. This concerns both our own products and products that we purchase from third parties;
  - f. materials: the materials, parts, semi-manufactured items or raw materials from which the delivered items are made.

## **ARTICLE 2: OFFER - PRICES**

- 1.** Unless we state a period of validity in/for our offer, this concerns an offer without obligation. We may still withdraw an offer without obligation within a period of no more than 2 working days after receipt of your acceptance.
- 2.** A composite offer does not oblige us to deliver part of the offered items against a corresponding part of the price.
- 3.** If we base our offer on your information and this information appears to be incorrect/incomplete or should change at a later date, we may adjust the quoted prices and/or periods accordingly.
- 4.** Our offer and our prices do not automatically apply to repeat orders.
- 5.** Samples and models that are displayed or provided to you, specifications of colours, dimensions, weights and other descriptions in brochures, promotional material or on our website are as accurate as possible but are only intended as a guide. You cannot derive any rights from these.
- 6.** Our prices stated in an offer or price list do not include BTW (Dutch VAT) and possible costs, such as transport or shipping costs, handling costs and expense claims of third parties engaged.
- 7.** Price reductions after the conclusion of the agreement because of, for example, discount campaigns, do not entitle you to a price reduction.
- 8.** If, after concluding the agreement, we are faced with (cost) price increasing circumstances, we may adjust the prices agreed with you accordingly. (Cost) price increasing circumstances at least include changes in legislation and regulations, government measures, currency fluctuations and price changes of the required materials.
- 9.** Are you a consumer and does it concern a price change within 3 months after the conclusion of the agreement? In this case, you may terminate the agreement within 5 working days after our notice of the change. Termination takes place by means of a written statement addressed to us.

## **ARTICLE 3: CONCLUSION OF THE AGREEMENT**

- 1.** The agreement shall be concluded after you have accepted our offer. If your acceptance deviates from the offer, the agreement shall only be concluded after we have accepted the deviations in writing.
- 2.** We are only bound by:
  - a.** an order without prior offer thereto;
  - b.** oral arrangements;
  - c.** additions to or changes of the General Terms and Conditions or the agreement; after we have confirmed this to you in writing, or as soon as we - without your objection - have started the execution of the order or arrangements.

## **ARTICLE 4: ENGAGING THIRD PARTIES**

We may have carried out deliveries by third parties.

## **ARTICLE 5: OBLIGATIONS - INFORMATION**

- 1.** You will ensure that:
  - a.** you provide us with all information required for the execution of the agreement on time;
  - b.** you inform us on time about all developments that are relevant for an advice;
  - c.** information carriers, files and suchlike provided by you are free from viruses and defects.
- 2.** You guarantee that the information provided to us is correct and complete and indemnify us against claims by third parties arising from the inaccuracy/incompleteness of this information.
- 3.** We shall keep secret all information we receive from or about you during the conclusion/execution of the agreement. We only provide this information to third parties insofar as this is necessary for the execution of the agreement.
- 4.** We process information covered by the GDPR (General Data Protection Regulation) in accordance with the GDPR and report any infringements on the security of the information also in accordance with the GDPR.
- 5.** You may only resell the items delivered to you in the original packaging - provided by us or our supplier - and with the original content. You may not make any changes to the original packaging and you must prevent damage. Unless we agree otherwise, in the event of violation of this you will forfeit to us an - immediately due and fully payable - fine of € 500.00 per violation (= per packaging with which you are in violation).
- 6.** Do you fail to meet the aforementioned obligations (on time) or your other obligations under the agreement/these General Terms and Conditions? In this case, we may suspend the execution of the agreement until you have fulfilled your obligations. The costs and other consequences (for example damage) arising from this shall be at your expense and risk.
- 7.** If you do not fulfil your obligations and we do not require immediate compliance, this does not affect our right to request compliance from you at a later time.

## **ARTICLE 6: DELIVERY - PERIODS**

- 1.** We make every effort to execute the deliveries on time, but agreed periods are never deadlines. Do we fail to fulfil our obligations (on time)? In this case, you must grant us a reasonable period for compliance in a written notice of default.
- 2.** A period starts after we have received all information from you required for the delivery and the possibly agreed (advance) payment. In case of delays the period will be extended proportionally.

3. We may deliver in parts and invoice each partial delivery separately.
4. The risk of items to be delivered transfers to you as soon as the items leave our premises/site or when we inform you that you can collect the items.
5. Dispatch or transport of the items is at your expense and risk. We are not liable for damage related to the dispatch/the transport.
6. Are you a consumer? In this case, the risk of the items transfers to you once you or a third party designated by you receive(s) the items. Do you appoint a carrier yourself? In this case, the risk transfers to you once this carrier receives the items. Dispatch or transport is at your expense.
7. We may store the items at your expense and risk if we are unable to deliver the items to you in the agreed manner or if you do not collect the items and the cause of this lies in your risk area. We will give you a reasonable period within which you still collect the items or give us the opportunity still to deliver.
8. Do you fail to fulfil your purchase obligation after this reasonable period? In this case you are immediately in default. We may fully/partially terminate the agreement - by means of a written statement addressed to you - and sell the items to third parties, without us having to compensate your possible damage, interest and costs. This does also not affect our right for compensation of our (storage) costs, damage and loss of profit or our right to still ask from you compliance.

## **ARTICLE 7: PACKAGING**

1. Packaging intended to be used several times remains our property. You may not use this packaging for any other purpose other than for which it is intended.
2. We determine whether you shall return the packaging to us or whether we collect it from you and at whose expense the collection takes place.
3. We may charge you a fee (returnable deposit) for the packaging. If you return the packaging to us for free within the agreed period, we shall take back the packaging. We shall refund the fee to you or settle it with the fee for the packaging of a subsequent delivery. We may deduct 10% handling costs from the amount to be refunded or settled.
4. Is the packaging damaged, incomplete or has it become completely unusable? In this case, you are liable for this damage and your right to refund the fee expires. Does the damage exceed the charged fee? In this case, we do not have to take back the packaging and we may charge this to you at cost price, minus the fee paid by you.
5. We may leave single-use packaging with you. Possible removal costs shall be at your expense.

## ARTICLE 8: COMPLAINTS - RETURNS

- 1.** You shall check the delivered items immediately after receipt and report any visible failures, damages, errors, defects, deviations in numbers and suchlike on the consignment note/accompanying note. In the absence of a consignment note/accompanying note, you report these complaints to us in writing within 2 working days after receipt. Do you fail to report these complaints on time? In this case, the items are deemed to have been received by you in good condition and to comply with the agreement.
- 2.** You report other complaints in writing to us immediately after discovery, but no later than within the agreed warranty period. All consequences of not reporting immediately are at your risk.
- 3.** Do you fail to report a complaint on time? In this case, you cannot invoke on an agreed warranty.
- 4.** Complaints do not suspend your payment obligations.
- 5.** The previous paragraph does not apply to consumers.
- 6.** You will give us the opportunity to investigate the complaint and provide us with all relevant information. Do the items need to be returned for the investigation? In this case, this is at your expense, unless your complaint proves to be justified afterwards. You always bear the dispatch/transport risk.
- 7.** Returning the items takes place in a manner to be determined by us and, if possible, in the original packaging/deposit packaging.
- 8.** No complaints are possible about:
  - a.** imperfections in/characteristics of items which are inherent to the nature of the materials from which the items are made;
  - b.** minor deviations between items accepted in the industry concerning indicated quantities, dimensions, weights, numbers, structures and suchlike;
  - c.** colour-, structure or other differences due to a modified production of the items;
  - d.** discolouration and minor colour deviations between items;
  - e.** items that have been changed, treated or processed by you after receipt.

## ARTICLE 9: GUARANTEES

- 1.** We will execute the deliveries agreed properly and in accordance with the standards applicable in our industry, but will give no further guarantee than we expressly agree with you.
- 2.** During the warranty period we guarantee the usual quality and reliability of the items delivered.

3. When using the materials required for the production of the items, we base on the information from the manufacturer/supplier about its characteristics. Does the manufacturer/supplier provide a warranty for these materials or for items delivered to you? In this case, this warranty applies between us in the same way. We inform you about this.
4. Do you want to use the items for another purpose than the usual purpose? In this case, we only guarantee that the items are suitable for this if we confirm so in writing to you.
5. You cannot invoke the warranty until you have paid the price agreed for the items.
6. The previous paragraph does not apply to consumers.
7. Do you rightly invoke an agreed warranty? In this case, we have the choice of a free repair or free replacement of the items or a refund of/discount on the agreed price. If there is any additional damage, the provisions set out in the Liability Article apply.
8. Are you a consumer? In this case, you may always choose for free repair/free replacement of the items, unless this cannot reasonably be asked of us. In the latter case, you may terminate the agreement - by means of a written statement addressed to us - or ask a discount on the agreed price.

## **ARTICLE 10: LIABILITY**

1. We accept no liability other than the guarantees expressly agreed with you or given by us.
2. We are only liable for direct damage. Any liability for consequential damage such as trading losses, loss of profit and losses sustained, damage caused by delay, personal or bodily injury is expressly excluded.
3. You take all necessary measures to prevent or limit the damage.
4. If we are liable, our obligation for compensation is at all times limited to the maximum amount paid out by our insurer where appropriate. Is no payment provided or is the damage not covered by an insurance taken out by us? In this case, our obligation for compensation is limited to the maximum invoice amount for the delivered items.
5. All your claims for compensation for damage suffered expires in any case 6 months after you become aware of/could have become aware of the damage you have suffered and could therefore have held us liable for this.
6. By way of deviation from the previous paragraph, a period of 1 year applies to consumers.
7. We are not liable - and you cannot make a claim under the applicable warranty - if the damage is caused by:
  - a. your incompetent use, use contrary to the purpose for which the items delivered were intended or use contrary to the directions, advices, operating instructions, manuals, leaflets and suchlike provided by/on our behalf;
  - b. your incompetent safekeeping (storage) of the items;

- c.** ageing/loss of quality of the items during your storage before a possible onward delivery to a third party;
  - d.** incompetent or inadequate maintenance of the items;
  - e.** errors in or incompleteness of the information provided to us by/on your behalf;
  - f.** your instructions or directions;
  - g.** or as a result of a choice you have made which deviates from our advice or what is usual;
  - h.** or because changes/adjustments have been carried out to the delivered items by/on your behalf, without our explicit prior permission.
- 8.** In the situations listed in the previous paragraph, you are fully liable for the damage arising from this and you indemnify us against claims from third parties.
- 9.** The limitations of liability stated in this article do not apply if the damage is due to our intent or conscious recklessness or if the limitations violate mandatory legal provisions. We shall only indemnify you against third-party claims in these cases.

## **ARTICLE 11: PAYMENT**

- 1.** We may request you a (partial) advance payment or other security for payment at all times.
- 2.** Unless we agree otherwise, you pay within an expiry period of 30 days after the invoice date. The invoice shall be considered correct if you do not object within this payment period.
- 3.** Did you fail to pay (in full) within the payment period? In this case, you owe us a default interest of 2% per month, to be calculated cumulatively over the principal. We count parts of a month as a full month in this respect. What does this cumulative monthly interest mean? In the first month after the expiry of the payment period, we calculate the interest on the principal. In each subsequent month during which no payment takes place, we calculate the interest on the principal plus the interest already accrued in the previous month(s).
- 4.** We calculate a default interest of 6% per year to consumers, unless the statutory interest is higher. In that case the statutory interest applies.
- 5.** If your payment is still not forthcoming after notice was given, we may also charge you the extrajudicial collection costs of 15% of the invoice amount with a minimum of € 40.00.
- 6.** In case of a notice we give consumers at least a period of 14 days after receipt of this notice to still pay. If payment is not forthcoming again, the extrajudicial collection costs for the consumer shall be:
  - a.** 15% of the amount of the principal for the first € 2,500.00 of the claim (with a minimum of € 40.00);
  - b.** 10% of the amount of the principal over the next € 2,500.00 of the claim;
  - c.** 5% of the amount of the principal over the next € 5,000.00 of the claim;
  - d.** 1% of the amount of the principal over the next € 190,000.00 of the claim;

e. 0,5% on any amounts above the principal.

All this with an absolute maximum of € 6,775.00.

**7.** For the calculation of the extrajudicial collection costs we may, after 1 year, increase the principal of the claim by the default interest accrued in that year.

**8.** Is your payment not forthcoming? In this case, we may terminate the agreement - by means of a written statement addressed to you - or suspend our obligations under the agreement until you still pay or provide us with appropriate security. We already have this right of suspension before you default on your payment if we already have legitimate reasons to doubt your creditworthiness.

**9.** We initially deduct payments received from all interest and costs due and subsequently from invoices which have been due and payable the longest, unless you state in writing with the payment that it concerns a later invoice.

**10.** You may not set off our claims against any counterclaims that you believe to have on us. This also applies if you apply for a (temporary) suspension of payments or are declared bankrupt.

**11.** The previous paragraph does not apply to consumers.

## **ARTICLE 12: RETENTION OF TITLE**

**1.** All items that we deliver to you remain our property until you have met all your payment obligations.

**2.** These payment obligations do not only concern the purchase price of the items, but also our claims:

**a.** for work carried out related to the delivery;

**b.** due to an attributable shortcoming of you such as compensation, extrajudicial collection costs, interest, and possible penalties.

**3.** If we deliver identical, non-individualised items to you, the batch belonging to the oldest invoice/invoices is always deemed to have been sold first. This means that the retention of title always rests on all items delivered that are still in your stock/building the moment we invoke our retention of title.

**4.** You may resell the items in the context of your normal business operations, provided you also agree a retention of title with your purchasers.

**5.** You may not pledge the items subject to a retention of title or bring these under the actual control of a financier.

**6.** You will inform us immediately if third parties claim that they have the ownership- or other rights to the items.

**7.** As long as you are in the possession of the items, you will carefully store them and as our identifiable property.

**8.** You arrange such a business insurance or contents insurance that the items delivered subject to a retention of title are co-insured. Upon our request, you provide us access to the insurance policy and associated premium payment receipts.



9. Do you act in violation of this article or do we invoke our retention of title for any other reason? In this case, we/our employees are allowed to enter your site and take back the items. This does not affect our rights to terminate the agreement - by means of a written statement addressed to you - or a fee of our damage, lost profit and interest.

### **ARTICLE 13: INTELLECTUAL PROPERTY**

1. Unless we agree otherwise, we are entitled to all intellectual property rights which are vested on or arise from items and documents delivered or produced by us. Only we may exercise these rights.

2. This means - among other things - that you may not:

a. use the documents outside the context of the agreement, may not multiply the documents, may not give the documents to third parties and may not allow third parties to inspect them;

b. copy, change, reproduce and suchlike the items or parts thereof; without our prior written permission.

3. Do you provide documents or files to us? In this case, you guarantee that these documents or files do not infringe any intellectual property rights of third parties. You are liable for damage that we suffer because of such infringements and indemnify us against any claims from third parties.

### **ARTICLE 14: BANKRUPTCY - LOSS OF POWER TO DISPOSE OF PROPERTY AND SUCHLIKE**

1. We may terminate the agreement - by means of a written statement addressed to you - at the time when you:

a. are declared bankrupt or an application has been made for this;

b. apply for (temporary) suspension of payments;

c. are affected by enforceable seizure;

d. are placed under guardianship or judicial supervision;

e. in any other way lose the power to dispose of your property or lose any legal capacity regarding (parts of) your assets.

2. You always inform the guardian or administrator of the (contents of the) agreement and these General Terms and Conditions.

### **ARTICLE 15: FORCE MAJEURE**

1. If we fail to fulfil our contractual obligations to you, this cannot be attributed to us in the event of force majeure.

2. In the following circumstances there is in any case force majeure on our side:

- a.** war, revolt, mobilisation, riots at home and abroad, government measures or a threat of these/similar circumstances;
  - b.** disruption of existing currency ratios at the time the agreement was entered into;
  - c.** operational failures due to fire, burglary, sabotage, power failure, failure of Internet or telephone connections, cybercrime, strikes, natural phenomena, (natural) disasters, and suchlike;
  - d.** transport difficulties and delivery problems caused by weather conditions, roadblocks, accidents, import and export hindering measures, a (temporary) lack of the necessary materials and suchlike.
- 3.** In case of force majeure, we may terminate the agreement - by means of a written statement addressed to you - or adjust our deliveries/postpone these for a reasonable period. We do not have to pay compensation to you in this case.
- 4.** What if the force majeure situation enters after we have already partially executed the agreement? In this case, we are entitled to the fee for the deliveries already executed.

## **ARTICLE 16: CANCELLATION - SUSPENSION**

- 1.** If you cancel the agreement prior to or during the execution, we may charge you a fixed compensation for:
- a.** all costs incurred;
  - b.** our damage suffered due to cancellation, including the lost profit.
- Dependent on deliveries already carried out/costs incurred, this compensation will be 20% to 100% of the agreed price.
- 2.** You shall indemnify us against any third-party claims arising from the cancellation.
- 3.** We may set off the compensation due against all amounts paid by you and your possible counterclaims.
- 4.** Do you request us to suspend the execution of the agreement? In this case, we may immediately claim the fee for all deliveries that have been carried out and charge this to you. This also applies to costs incurred or costs arising from the suspension.
- 5.** Costs that we incur for resuming the delivery or deliveries are also at your expense. What if we cannot resume the execution of the agreement after the suspension? In this case, we may terminate the agreement by means of a written statement addressed to you.

## **ARTICLE 17: APPLICABLE LAW - JURISDICTION**

- 1.** Our agreements are governed by the laws of the Netherlands.
- 2.** We exclude the applicability of the Vienna Sales Convention (CISG).

- 3.** We submit disputes to the court competent in our place of establishment. In addition, we always retain the right to submit the dispute to the competent court in your place of establishment or residence.
- 4.** As a consumer, you may always choose the legally competent court, even if we choose another court. You will then inform us of your choice within one month after receipt of the summons.
- 5.** If you are established/residing outside of the Netherlands, we may also submit the dispute to the competent court in the country or the state where you are established/reside.

Date: February 26, 2021