

General Terms and Conditions Brasplast Europe B.V.



1. Definitions

- 1.1 In these General Terms and Conditions ("Terms and Conditions") the following terms have the following meaning:
 - a) Seller: Brasplast Europe B.V., registered with the Chamber of Commerce under number 24342390, trading under the name of Brasplast Europe B.V.;
 - b) Buyer: every natural person or legal entity with whom/which Seller enters into an Agreement for the purpose of the sale of Products;
 - c) Agreement: the acceptance of the offer from Seller by Buyer. The offer from Seller also concerns the applicability of the Terms and Conditions and the acceptance of these Terms and Conditions by Buyer;
 - d) Products: the goods that are the subject of the Agreement;
 - e) Offer: an offer, subject to specific conditions, from Seller to Buyer concerning Products;
 - f) Order: every assignment from Buyer, in whatever form;
- 1.2 These Terms and Conditions have been drawn up in several languages. If and when the text of the Terms and Conditions in another language appears to be in conflict with the Dutch version of the Terms and Conditions, the Dutch text of the Terms and Conditions will prevail.
- 1.3 The Terms and Conditions apply to every offer from Seller to Buyer, to the Offer and the acceptance thereof as well as to the Agreement that subsequently comes into effect.

2. Changes

- 2.1 Changes in an Offer or Agreement will only have effect if these are agreed in writing between Purchaser and Seller.
- 2.2 If changes result in the increase or reduction of the costs, a change of the purchase price ensuing therefrom must be agreed in writing between parties.

3. Offer, coming into effect of the Agreement

- 3.1 An offer from Seller will be without obligation and will not bind Seller. An offer will only apply as an invitation to Buyer to place an Order.
- 3.2 All statements and specifications by Seller with regard to the Product are made with due care. However, Seller does not guarantee that no derogations will occur vis-a-vis the specifications. A minor derogation will not be regarded as a shortcoming. If and when Buyer demonstrates that the Products derogate to such an extent from the specifications from Seller, so that purchase can no longer be required in all reasonableness, Buyer will have the right to terminate the Agreement. Termination as a result of that which is described in this subclause will only be justified when termination is permitted in accordance with reasonableness and fairness.
- 3.3 An agreement only comes into effect if and insofar as Seller has accepted an Order in writing and any agreed payment security, including an irrevocable confirmed letter of credit, has been accepted in writing.
- 3.4 If the acceptance contains provisos or changes with regard to the Offer in that case, in derogation from the provisions of the previous subclause, the Agreement will only come into effect if Seller informs Purchaser that Seller agrees to these derogations from the Offer.
- 3.5 Every Agreement entered into by Buyer subject to the resolutive condition that Buyer, exclusively at the assessment by the credit insurer of Seller, is deemed to have sufficient creditworthiness for the financial performance of the Agreement. Reliance by Seller on the resolutive condition as described in this article can never result in liability for compensation on the part of Seller.
- 3.6 If circumstances occur for Buyer on the basis of which Seller has good grounds to fear that Buyer will not fulfil his payment obligations under the Agreement, Seller will be entitled, prior to (further) performance, to also demand from Buyer for the ongoing Agreements that advance payment of the purchase price takes place or that Buyer provides proper security. Refusal by Buyer to provide the required security will give Seller the right to suspend the obligations of the Seller ensuing from the Agreement and ultimately to terminate the Agreement, without prejudice to the right of Seller to compensation of any damage suffered.

4. Quality and description

- 4.1 Seller undertakes towards Buyer to deliver the Product to Buyer in description, quality and quantity as further descriptions in the (possibly later amended) Agreement.
- 4.2 Seller retains the right to change the composition of the Product without thereby any impairment arising of the functional characteristics of the Product.
- 4.3 Seller does not guarantee that the goods are suitable for the purpose for which Buyer wishes to designate the goods, even if this purpose has been made known to Seller, unless the contrary has been expressly agreed between parties.

5. Prices

- 5.1 All prices are expressed in Euro unless explicitly stated otherwise, excluding turnover tax and are based on delivery in conformity with the agreed Incoterms 2010 from a location as agreed in the Agreement.
- 5.2 Special types of packaging and dispatch will be at Purchaser's expense, unless agreed otherwise in writing.

- 5.3 Seller has the right to charge the price increase as a result of taxation and suchlike on to Buyer. If and when the price increase occurs after the concluding of the Agreement and prior to the delivery of the Products, Seller will have the right to charge on the increase in all reasonableness. Seller will inform Buyer when a price increase occurs.
- 5.4 Buyer indemnifies Seller against the consequences for Seller possibly ensuing from:
 - a) Buyer is not properly registered for turnover tax or a comparable tax in a relevant EU member state and/or;
 - b) Buyer has provided incorrect or late data to Seller and/or the authorities in the field of turnover tax or a comparable tax in a relevant EU member state.

6. Payment

- 6.1 Payment will take place within 30 days after the invoice date without reduction or set-off, unless agreed otherwise in writing. Buyer will not be entitled to set off unless Buyer is permitted to do this by a court judgment that has become final.
- 6.2 If Purchaser remains in default of payment in a timely manner or in full of an invoice, Purchaser will be in default by operation of law in that case. Purchaser will owe interest equal to the statutory interest for commercial transactions from the occurrence of the default. In addition all costs incurred by Seller for obtaining payment judicially and extrajudicially will be at Purchaser's expense. The extrajudicial collection costs are recorded at 15% of the amounts owed with a minimum of € 200.
- 6.3 A complaint with regard to a received invoice date related to the delivered Products can be made in writing to Seller until 8 days after an invoice date.
- 6.4 A complaint by Buyer will not entail any exemption from the payment obligation on the part of Buyer within the payment term agreed for this.
- 6.5 During the period of non-fulfilment by Buyer of his payment obligation, Seller will have the right to suspend or postpone its obligations under the Agreement or legal relationship. During this period Buyer will have no right to the use of the Products while Seller has the right to claim complete fulfilment.

7. Specifications

- 7.1 Seller will, in all reasonableness, provide cooperation to an inspection set up by Buyer as a result of the complaint as described in article 6.3 of these Terms and Conditions.
- 7.2 Buyer must provide cooperation to an inspection as a result of the complaint, by an independent expert, whose opinion must be regarded as binding. If the complaint of Buyer is well-founded, the costs of the expert opinion will be at Seller's expense. If the complaint is unfounded, the costs of the expert opinion will be at Buyer's expense.
- 7.3 Purchaser has no right to complain with regard to the Products regarding which no inspection of the complaint can be conducted by Purchaser.
- 7.4 Purchaser will not be entitled to return the Products, prior to agreement in writing thereto from Seller. The costs attached to the returning of Product will at Purchaser's expense. The risk will transfer at the time when the Products are received by Seller.
- 7.5 Set-off or suspension of the performance by Buyer as a result of reliance on the right of complaint is not permitted.

8. Delivery

- 8.1 The delivery period in the Agreement is indicative and can never be regarded as a final deadline. The agreed delivery period is based on the circumstances applicable at the time of the concluding of the Agreement. Seller will only be in default with regard to the delivery period after Seller has been given notice of default in writing by Buyer and Seller has still been provided with the opportunity to, within a reasonable period, deliver and Seller has failed to do this. The arrangement as worded in this article will not affect the rights of Seller as set out in article 3 of these Terms and Conditions.
- 8.2 The delivery period will commence on the date of the coming into effect of the Agreement as set out in article 3 of these Terms and Conditions.
- 8.3 The exceeding of the delivery period will not give Buyer any right to any form of compensation. Only in the event of excessive exceeding of the agreed delivery period, more than 12 weeks, will Buyer have the right to terminate the Agreement, unless there is force majeure as described in article 13 of these Terms and Conditions.
- 8.4 Seller is at any time entitled to partial delivery of the Products. Seller can, on the basis of the provisions of article 3.5 and 3.6 of these Terms and Conditions, demand payment for a partial delivery prior to proceeding with the delivery of the other part.
- 8.5 The delivery conditions are recorded in the Agreement. The delivery will take place in accordance with the applicable Incoterms.

9. Storage

- 9.1 If, for any reason whatsoever, Buyer is not able to take receipt of the Products at the agreed time, and these are ready for dispatch, Seller will on the request from Buyer, if Seller's storage facilities permit this, keep, secure and take all reasonable measures to prevent the deterioration of quality of the goods until these have been delivered to Buyer.

- 9.2 Seller will charge storage costs to Buyer in accordance with the usual rate of Seller and in the absence thereof in accordance with the rate usual in the sector, from the time when the Products are ready for dispatch, or as the case may be, if that is a later time, from the delivery date agreed in the Agreement.
- 9.3 The late, as described in this article, being able to take receipt of the Products by Buyer means that Buyer will be in default without notice of default from the time of the actual delivery.
- 10. Guarantee**
- 10.1 When, as a result of an expert opinion as described in article 7, subclause 2, of these Terms and Conditions, it has been sufficiently demonstrated that the Products do not correspond with that which Buyer could reasonably expect, Seller will in consultation with Buyer replace the Products free of charge in exchange for the return of the Products that appeared to be inferior.
- 10.2 In derogation from subclause 1 of this article, Buyer and Seller have the option to agree to a discount for the inferior Products as a result of which the Seller will be fully discharged from his guarantee obligations and will not be held liable for any compensation whatsoever.
- 11. Liability**
- 11.1 Except in the event that there is intention or gross negligence on the part of Seller and with the exception of statutory liability as a result of mandatory statutory provisions, Seller will never be liable for any damage suffered by Buyer. Liability for indirect loss or damage, consequential loss, intangible loss or trading loss is expressly excluded.
- 11.2 If, as a result of the provisions of subclause 1 of this article, any liability is vested in Seller, this liability will be limited to an amount equal to the net invoice amount excluding VAT, with a maximum of € 40,000 Euro (in words: forty thousand Euro) per loss event. A series of connected damage-causing events will apply as one single loss event for the application of this article.
- 11.3 Seller does not accept any liability for the performance of the Products as a result of processing. Buyer must personally verify whether the Product is suitable for the purpose for which it is intended.
- 11.4 Claims for payment of compensation will lapse by means of the passing of one year after the day on which Buyer became aware of the damage and the potential liability of Seller for this damage.
- 11.5 Buyer indemnifies Seller against claims by third parties on whatsoever basis, related to the Products, or ensuing from the use of the Products.
- 11.6 Seller will never be liable for errors and/or defects of new Products that are constituted from the Products delivered by Seller to Buyer.
- 11.7 The provisions of this article will only apply insofar as permitted by mandatory statutory provisions.
- 12. Termination**
- 12.1 Seller as well as Buyer will be entitled to terminate the Agreement in the following cases, without notice of default, forthwith and with immediate effect :
- moratorium;
 - bankruptcy;
 - liquidation.
- 12.2 If Buyer does not fulfil his obligations ensuing from the Agreement and this non-fulfilment justifies termination, Seller will be entitled to forthwith terminate the Agreement with immediate effect, without any obligation of compensation, while Buyer can be held liable for compensation on the basis of breach of contract.
- 12.3 The compensation as set out in subclause 2 will consist at least of the costs ensuing from the obligations entered into by Seller in his own name with third parties.
- 12.4 Termination by Seller or Buyer on the basis of the possibilities referred to in subclause 1 will not release Buyer from his payment obligations. That which Seller has invoiced before the termination related to that which Seller has properly delivered will be immediately due and payable at the time of the termination.
- 13. Force majeure**
- 13.1 Force majeure is taken to mean every circumstance beyond the control of Seller and Buyer as a result of which the fulfilment of the obligations by Buyer or Seller can no longer be required in all reasonableness. Fulfilment can no longer be required from the other party in all reasonableness as a result of force majeure. Parties must immediately inform each other with regard to a force majeure situation.
- 13.2 Force majeure inter alia includes transport problems, delay on the part of the supplier of Seller, industrial action, fire and natural force. This list is indicative and not exhaustive.
- 14. Retention of title (for German clients an alternative clause is applicable)**
- 14.1 The ownership of the Products will transfer, in spite of the actual transfer, to Buyer after Buyer has paid in full all that which Buyer owes or will owe to Seller with regard to Products to be delivered pursuant to any agreement.
- 14.2 Until the ownership of the Products has transferred to Buyer, Buyer will not be entitled to sell the Products to third parties or to encumber the Products, all this in the broadest sense of the words. Buyer will only be entitled to sell the Products, which Seller is the owner of, to third parties insofar as this is necessary in the context of the usual business operations of Buyer.
- 14.3 The risk transfer will take place at the time of the actual transfer. This means that Buyer must keep the Products insured also when the ownership, as a result of the retention of title included in this article, has not yet transferred to Buyer.
- 15. Personal data**
- 15.1 If and insofar as parties process personal data, they will act thereby in accordance with the General Data Protection Regulation ((EU) 2016/679, GDPR). Parties are both independently responsible for the fulfilment of their obligations on the basis of the GDPR.
- 15.2 Seller will process the personal data of Buyer. Seller will only process personal data with the objective of fulfilling Seller's obligations on the basis of the Agreement and/or to inform Buyer regarding the status of Products and Orders. The processing of personal data by Seller is based on the performance of the Agreement with Buyer (including taking pre-contractual measures), or as the case may be the justified interest of Seller. Seller will not provide personal data to third parties. Seller provides further information with regard to the processing of personal data on Seller's website.
- 16. Applicable law and court with competent jurisdiction**
- 16.1 The legal relationship between Purchaser and Seller is governed by the law of the Netherlands.
- 16.2 Disputes between Parties will be exclusively adjudicated by the court with competent jurisdiction in the Zeeland-West Brabant district, location Breda.
- 16.3 The applicability of the Vienna Sales Convention is expressly excluded.
- 17. Miscellaneous provisions**
- 17.1 If one or more articles of these Terms and Conditions is/are annulled, or as the case may be are deemed to be unreasonably onerous, the other provisions under these Terms and Conditions will remain in full effect.
- 17.2 Seller retains the right to amend and/or to add to these Terms and Conditions. Amended Terms and Conditions will be deemed to be accepted if these are not rejected by Buyer within 14 days after receipt thereof.
- 17.3 These Terms and Conditions are available in several languages. In the event of lack of clarity with regard to the meaning of a concept or article in the Terms and Conditions, the Dutch Terms and Conditions will be the guiding principle.
- 18. Retention of title (applicable for German clients)**
- 18.1 Products shall remain Seller's property until the payment of all claims in respect of the business relationship with Buyer, including any future claims.
- 18.2 If the Products under retention of title should be processed, mixed or combined in the meaning of sections 947, 948 and 950 of the German Civil Code (BGB) with other items that do not belong to Seller, Seller shall have a right to co-ownership of the new item in the same ratio as that between the value of the Products under retention of title, including VAT, and the value of the other items processed or combined at the time of processing or combination. Buyer shall store and insure the item on behalf of the Seller free of charge.
- 18.3 Until further notice Buyer is authorised to dispose of the Products under retention of title within the framework of its ordinary business operations. For this event Buyer hereby assigns to Seller his claims from a resale of the Products under retention of title (the resale price including VAT) – including the corresponding claims from bills of exchange and together with all ancillary claims. If Buyer should sell the Products under retention of title together with Products that do not belong to Seller at a total price the assignment shall only apply to the sum which Seller has charged Buyer for the Products under retention of title which have been sold.
- 18.4 Buyer must immediately notify Seller in writing if any third parties should seize the Products under retention of title or take possession of the claims assigned to Seller and must give Seller every possible support in the intervention.
- 18.5 The costs for complying with the said duty to co-operate in enforcing all rights in respect of the retention of title and for all arrangements made for the maintenance and storage of the Products shall be borne by Buyer.