

1. Introduction

These general terms and conditions of sale ("General Conditions") are applicable to every offer, quote, purchase order, order confirmation, invoice or agreement between Bakbel Europe S.A. ("Bakbel") and its purchaser ("Purchaser"), unless otherwise agreed in writing between the parties.

In the event of any conflict between these General Conditions and any more specific conditions agreed in writing between the parties ("Specific Conditions"), the conditions of the latter shall prevail.

The General Conditions and the Specific Conditions shall hereinafter jointly be referred to as the "Agreement". Acceptance of the General Conditions implies that the Purchaser renounces in full the application of its own general terms and conditions (of purchase), which are rejected by Bakbel. Specifications means any specification of the Goods

2. General

An Agreement is only entered into between Bakbel and the Purchaser once the Purchaser has accepted Bakbel's offer in writing, or, in the event no prior offer is made by Bakbel, when Bakbel has issued a written (purchase) order confirmation. Every purchase order from the Purchaser to Bakbel shall be made in writing and shall be considered final and irrevocable as from the issuance of the written order confirmation by Bakbel.

The delivery of the products shall take place in accordance with the Incoterms (last edition) stated in the Purchase order confirmation and the Invoice.

The Purchaser accepts deviations (in accordance with usual commercial practice) of +/- 10% compared to the ordered volume due to miscellaneous constraints including logistical constraint and constraints linked to batch production and Purchaser accepts that the invoice shall be increased or reduced proportionally. Bakbel will use its best commercial efforts to fulfil each order on the confirmed delivery date and to avoid or limit any delays. In the event of a (threatened) delay in delivery, Bakbel shall in any event promptly inform the Purchaser thereof. The delivery can be suspended by Bakbel as long as the Purchaser has not yet fulfilled any obligation vis-à-vis Bakbel.

The Purchaser is obliged to take possession of the ordered products on the confirmed delivery dates. Should the Purchaser for any reason, except for delivery of defective products, not take possession of the products at the time of delivery: (i) the products shall be deemed to have been delivered; (ii) the risk in the products shall pass to the Purchaser; and (iii) Bakbel is entitled to store the products at the sole expense and risk of the Purchaser. Such protective measure does not suspend the payment obligation of the Purchaser.

3. Reservation of title and transfer of risk

Products sold remain the property of Bakbel until payment of the purchase price in full (including late payment interests, costs and indemnities payable by the Purchaser) or any other amount owed by the Purchaser to Bakbel. Failure to pay any amounts due on the respective dates may lead to reclaiming the products. Until full payment of the purchase price (i) the Purchaser acknowledges that he is in possession of the products solely as bailee for Bakbel, (ii) the Purchaser shall not use the products as currency or pledge or otherwise dispose of the products, and (iii) the Purchaser shall store the products in such a manner that they are clearly identifiable as the property of Bakbel.

The Purchaser may however use in its own production process or sell the products at full market value to its own bona fide customers taking into account that Bakbel shall be entitled immediately and exclusively to the (final/reworked) product or to the proceeds of such sale up to the purchase price.

Reservation of title does not affect the risk transfer to the Purchaser as from the time of delivery, whereby the Purchaser will bear all risks and storage burden. Unless otherwise stipulated elsewhere, we deliver according to the "Ex-works" incoterms. Transfer of risk shall occur according to the rules of the Incoterm used.

The Purchaser's right to possession of the products shall terminate and the Purchaser shall notify Bakbel immediately (i) if the products are seized by a third party; (ii) in case of breach by the Purchaser of one or more of the obligations arising from this Agreement in case the breach has not been remedied within 7 calendar days following a written notice by Bakbel; (iii) if the Purchaser enters into any composition or similar general arrangement (formal or informal) with its creditors or is unable to pay its debts, is subject to a procedure of judicial reorganization or bankruptcy, has a receiver or administrator appointed in respect of its undertaking, assets or income or any part thereof, has passed a resolution for its liquidation, or a request is filed or an order is made by any court for its liquidation or for its administration; or (iv) if the Purchaser ceases to trade.

In the event of seizure, bankruptcy, or inability to pay its debts, the Purchaser shall inform the competent bailiff, trustee in bankruptcy or administrator of the present retention of title clause and shall make available all relevant documents concerning the products.

4. Delivery and reception

Dates for placing goods at the buyer's disposal are given for guidance only and no delay shall give grounds for compensation of any kind whatever.

Any complaint concerning conditions of delivery will in any case only be accepted if the incoterms used stipulate that the transfer of risk did not already occur to the Purchaser. In addition, any complaint concerning conditions of delivery, weight or the state of the goods on unloading must be made in writing by the driver on the International Consignment Note (CMR). No subsequent complaint regarding conditions of transport and delivery will be accepted.

5. Price and payment terms

The purchase orders are invoiced at the prices and on the terms and conditions as stated in the order confirmation or the Specific Conditions.

In case of import or export, eventual import and export duties, taxes and transportation costs will be charged separately, unless otherwise agreed.

The price is exclusive of any Value Added Tax which the Purchaser shall be additionally liable to pay to Bakbel. Bakbel may, by giving notice to the Purchaser at any time before the delivery, increase the price of the products to reflect any increase in the cost of the products that is due to (i) any factor beyond Bakbel's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs), (ii) any request by the Purchaser to change the delivery date(s), quantities or types of products ordered or the Specifications or (iii) any delay caused by any instructions of the Purchaser or failure of the Purchaser to give Bakbel adequate or accurate information or instructions.

Unless otherwise agreed, Bakbel's invoices are payable at the registered office of Bakbel within 30 calendar days following the invoice date, via bank transfer on such bank account as indicated thereon (including any costs, taxes, duties or other levies). Any objection should be communicated by the Purchaser via registered mail within 7 calendar days following receipt of the invoice. Upon expiration of such term, the relevant invoice shall be considered accepted by the Purchaser and no further complaints shall be accepted by Bakbel.

In case of (partial) non-payment of an invoice on the due date, Bakbel is automatically entitled, without prior notice, to the (applicable) statutory interest for late payment within the meaning of Article 1 of Directive 2011/7/EU of 16 February 2011 on combating late payment in commercial transactions (as amended from time to time) as implemented in applicable national law, as of the date on which the invoice was due, without prejudice to Bakbel's right to claim a higher compensation in case the incurred damages exceed the aforesaid amount. All extrajudicial and legal costs incurred by Bakbel in the process of compelling the Purchaser to fulfil its obligations are payable by the Purchaser.

In case of (partial) non-payment of an invoice on the due date Bakbel reserves the right to suspend the execution of all pending purchase orders, without giving prior notice or paying any compensation to the Purchaser.

The Purchaser authorizes Bakbel to (i) make a credit search against the Purchaser and to keep a record of the search (ii) to share such credit records and the Purchaser's payment record to Bakbel with credit reference agencies any other organization on an unrestricted basis (iii) withdraw all of the Purchaser's credit facility without further notice.

6. Warranties and notice of defects

Bakbel warrants that products are delivered free from any liens and encumbrances, strictly in accordance with the product specifications, all applicable laws and the terms of the Agreement. Bakbel makes no other representation or warranty with regard to the products, their merchantability, fitness for use or a particular purpose or otherwise, express or implied, all of which are hereby expressly excluded.

Bakbel shall not be liable for breach of warranty if: (i) the Purchaser makes any further use of such products after having filed a complaint in accordance with the below-mentioned clause, (ii) Purchaser failed to comply with product documentation and/or instructions as to the storage, use or handling of the products; or (iii) the Purchaser alters such products without the written consent of Bakbel.

Upon delivery of the products, the Purchaser shall immediately inspect and examine the delivered products. If the Purchaser discovers that a delivery of the products or part thereof has any defects which are apparent on reasonable visual inspection (e.g. transport damages and quantity), the Purchaser shall promptly notify Bakbel in writing and shall provide reasons for such rejection. The Purchaser shall furthermore notify Bakbel of any latent defects in writing within 7 calendar days following its discovery and shall provide details thereof. Failure to make such claim within the aforesaid timeframe will result in the final acceptance of the products by the Purchaser.

Without prejudice to applicable mandatory legal obligations, the Purchaser shall, upon acceptance of a complaint by Bakbel, be entitled to a replacement of the products or a refund of the agreed price, provided that the products are returned to Bakbel by the Purchaser. No products may be returned or destroyed without Bakbel's prior written consent.

With respect to the products that are not manufactured by Bakbel, the duration and the scope of the guarantee provided by Bakbel is always limited to any guarantee that Bakbel receives from its manufacturer or its supplier (back-to-back) as provided in the Specific Conditions and/or the specifications.

Bakbel may oblige the Purchaser to recall products sold by the Purchaser, within a reasonable period to be determined by Bakbel, if it appears that the products sold by the Purchaser could be defective or cause loss or damage. Furthermore, Purchaser shall comply with all reasonable instructions Bakbel may give in view of such product recall. The costs for such recall shall be paid by Bakbel.

7. Liability

Bakbel shall indemnify the Purchaser against all claims, liabilities, losses, damages, costs, penalties and expenses awarded against or incurred or paid by it as a direct result of or in connection with a breach of any warranty given by Bakbel or obligation imposed on Bakbel under the Agreement.

In the event that Bakbel is held liable for any damages in accordance with the above-mentioned clause, such liability shall be limited to 2 times the invoice value of that part of the purchase order to which the liability pertains.

Bakbel shall not be liable for any type of special, incidental indirect, consequential or liquidated damages, including but not limited to loss of profit, loss of savings or damage to third parties.

The Purchaser bears all risks which may arise from the use of our products. We are unable to guarantee the suitability of these products for uses other than those for which they are at present intended and we cannot be held responsible for the consequences of use in error or not in accordance with prudence and custom.

Nothing in these General Conditions excludes or limits Bakbel's liability for gross negligence, wilful misconduct, fraud or death or personal injury caused by Bakbel.

8. Force majeure

Bakbel shall be legally released of, and not obliged to comply with, any obligation vis-à-vis the Purchaser in case of an event of force majeure including but not limited to explosion, fire or flood, protests, riot, civil commotion, acts of terrorism, governmental actions, lock-outs, traffic circulation problems, strikes or other industrial action, import or export restraints, embargo, equipment damages, failure of Bakbel's supplier to deliver the products in time to Bakbel and any event which prevents the normal supply of its products, as well as similar circumstances that affect Bakbel's subcontractors or suppliers.

During such event of force majeure, the obligations on the part of Bakbel are suspended for a period equal to the period during which the event of force majeure exists. If the event of force majeure continues for a period of more than 3 months, either party may terminate the suspended part of the Agreement with immediate effect by notifying the other party in writing thereof, without any compensation being due.

9. Termination

Unless otherwise stated in Specific Conditions, Bakbel has the right to terminate the Agreement with the Purchaser at any time, with immediate effect, without prior notice and without compensation (i) in case the products are seized by a third party; (ii) in case of breach by the Purchaser of one or more of the obligations arising from this Agreement in case the breach has not been remedied within 7 calendar days following a written notice by Bakbel; (iii) if the Purchaser enters into any composition or similar general arrangement (formal or informal) with its creditors or is or threatens to be unable to pay its debts, is subject to a procedure of judicial reorganisation or bankruptcy, has a receiver or administrator appointed in respect of its undertaking, assets or income or any part thereof, has passed a resolution for its liquidation, or a request is filed or an order is made by any court for its liquidation or for its administration; or (iv) if the Purchaser ceases to trade. In case of termination, Bakbel likewise reserves the right to claim compensation for all costs, interests and damages incurred by Bakbel.

10. Confidentiality

The Purchaser shall not, without Bakbel's prior written consent, reveal to any person or otherwise announce the existence or content of its Agreement with Bakbel, except where necessary for the execution of the Agreement. The Purchaser further acknowledges that in the course of the performance of its Agreement it may have access to confidential or proprietary information of Bakbel. Such confidential information will remain the sole and exclusive property of Bakbel and will not be used by the Purchaser for any purpose other than the discharge of the Purchaser's obligations vis-à-vis Bakbel. No further use will be made by the Purchaser after termination of the Agreement.

11. Miscellaneous

The Agreement constitutes the entire agreement between the parties. The Purchaser acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Bakbel which is not set out in the Agreement.

In the event that any one or more of the provisions of the Agreement, shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein. In such case, the parties shall make every effort to make a valid and enforceable Agreement in lieu of the ineffective provision, which reflects as closely as possible the provision which has become ineffective.

Failure or delay by Bakbel in enforcing or partially enforcing any provision of the Agreement will not be construed as a waiver of any of its rights under the Agreement. Any waiver by Bakbel of any breach of, or any default under, any provision of the Agreement by the Purchaser will not be deemed to be a waiver of any subsequent breach or default.

The Purchaser may not assign any of its rights or obligations without the prior written consent of Bakbel.

12. Applicable law and jurisdiction

All Agreements as well as all other agreements that result there from, are exclusively governed by the laws of Belgium, without regard to choice of law rules. The application of the UN Vienna Sales Convention of 11 April 1980 as amended from time to time, is expressly excluded.

All disputes arising out of or in connection with the Agreement as well as all other agreements that result there from, shall be exclusively submitted to the courts of Belgium.