



## GENERAL TERMS AND CONDITIONS OF SUPPLY TO NON-CONSUMERS

of:

BIP Holland b.v.  
Bredaseweg 237  
4705 RN Roosendaal

further referred to as: BIP

### Article 1 Definitions

1. In these General Terms and Conditions the following terms are used with the following meanings, unless expressly stated otherwise:

User: BIP Holland b.v. further referred to as BIP

Buyer: the opposite party of BIP, acting in the exercise of his profession or business;

Agreement: the Agreement between BIP and the Buyer.

### Article 2 General

1. The provisions of these General Terms and Conditions apply to every offer and every agreement between BIP and a Buyer to which BIP has declared these General Terms and Conditions are applicable, insofar as the parties have not expressly deviated from these terms and conditions in writing.

2. The present terms and conditions also apply to all agreements with BIP, the execution of which requires the services of third parties.

3. The general terms of business of the Buyer shall solely apply if it has been expressly agreed in writing that these apply to the agreement to the exclusion of the present General Terms and Conditions.

4. If one or several provisions in these General Terms and Conditions are null and void or are voided, the remaining provisions in these General Terms and Conditions shall remain fully applicable. BIP and the Buyer shall in such an instance enter into consultations to agree on new provisions to replace the null and void or voided provisions, whereby the object and purport of the provisions to be replaced will be observed as much as possible.

### Article 3 Offers and quotations

1. Offers and quotations issued by BIP are made without obligation; they are valid during thirty days, unless otherwise indicated. BIP is only bound by quotations if the Buyer confirms acceptance of the same in writing within thirty days.

2. Delivery dates in quotations issued by BIP are indicative and do not give the Buyer any right to rescind the agreement or to compensation, unless expressly agreed otherwise.

3. Prices in said offers and quotations are exclusive of VAT and other levies imposed by the authorities as well as forwarding costs and any transportation and packaging costs, unless expressly stated otherwise.

4. If the acceptance deviates from the quotation included in the offer BIP will not be bound by the customer's acceptance of it. The agreement will in that instance not be concluded in accordance with the said deviating acceptance, unless BIP indicates otherwise.

5. A combined quotation does not oblige BIP to deliver a part of the goods included in the quotation or offer for a proportion of the stated price.

6. Offers or quotations do not automatically apply to reorders.

### Article 4 Execution of the Agreement

1. BIP will execute the agreement to the best of its knowledge and ability and in accordance with the standards of proper workmanship, all of the foregoing based on the current state of the art.

2. If and insofar as required for the proper execution of the Agreement, BIP has the right to have certain work performed by third parties.

3. The Buyer shall ensure that all data which BIP indicates is necessary or which the Buyer can reasonably be expected to know is required for the execution of the agreement, is provided to BIP in due time. If BIP has not been provided in due time with the data necessary for the execution of the agreement, BIP shall have the right to suspend the execution of the agreement and/or to charge the Buyer for the additional costs resulting from the delay at the generally accepted rates.

4. BIP will not be liable for damage of whatever nature caused by the fact that BIP worked on the basis of incorrect and/or incomplete data provided by the Buyer, unless BIP should have been aware of said incorrectness or incompleteness.

5. If it is agreed that the agreement is to be executed in phases, BIP may suspend implementation of sections that belong to a subsequent phase until the Buyer has approved the results of the immediately preceding phase in writing.

6. If BIP or third parties engaged by BIP in the context of the assignment perform work at the site of the Buyer or a location designated by the Buyer, the Buyer shall provide the facilities reasonably required by those personnel free of charge.

7. The Buyer shall indemnify BIP against potential claims by third parties who may suffer damage imputable to the Buyer in connection with the execution of the Agreement.

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### **Article 5 Delivery**

1. Delivery shall be effected from BIP's warehouse.
2. If delivery is made on the basis of the Incoterms, the Incoterms in effect at the time of concluding the agreement shall apply.
3. The Buyer is obliged to accept the products at the moment that BIP delivers or arranges to deliver them, or at the moment when these are placed at his disposal in accordance with the agreement.
4. If the Buyer refuses to accept the goods or is negligent in providing information or instructions required for the delivery, BIP is entitled to store the goods at the expense and risk of the Buyer.
5. If the goods are delivered, BIP is entitled to charge any possible delivery costs. These will be invoiced separately at the time.
6. If BIP requires information from the Buyer in the context of the execution of the agreement, the delivery period will commence after the Buyer has made the information available to BIP.
7. If BIP notifies a delivery time, this is only given as an indication. A notified delivery time shall never be a fixed deadline.
8. BIP is entitled to make part deliveries of goods, unless the parties have agreed to deviate from this or the part delivery has no independent value. BIP is entitled to invoice such part deliveries separately.
9. If it is agreed that the agreement is to be executed in phases, BIP may suspend implementation of sections that belong to a subsequent phase until the Buyer has approved the results of the immediately preceding phase in writing.

### **Article 6 Samples and models**

If the Buyer has been shown or given a sample or model, then this is presumed to be merely an indication provided without the goods having to correspond to it, unless it has been expressly agreed that the goods will correspond to the sample or model.

### **Article 7 Inspections and complaints**

1. The Buyer is obliged to inspect the delivery or have it inspected at the time of delivery, and in all instances within the shortest possible time. In this regard the Buyer shall investigate whether the quality and quantity of the delivery corresponds to what was agreed upon, or at least complies with the requirements expected of it in normal commercial traffic.
2. Any visible defects or shortages should be notified in writing to BIP within five days of delivery.

3. If a complaint is made as a consequence of the previous paragraph, the Buyer remains obliged to take delivery and make payment for the goods purchased. Should the Buyer wish to return the faulty goods, then this shall be effected with prior written consent of BIP in the manner indicated by BIP.

### **Article 8 Payments, price and costs**

1. BIP may, among other things, pass on price increases, if between the time of the offer and execution of the agreement there have been significant price changes as regards e.g. exchange rates, wages, raw materials, semi-manufactures and packaging materials.
2. The prices employed by BIP are exclusive of VAT and other potential levies, as well as other costs incurred in the context of the agreement, including carriage and administration costs, unless otherwise indicated.

### **Article 9 Changes to the agreement**

1. If during the execution of the Agreement it turns out that it is necessary to modify and/or supplement the works to be performed to ensure their proper execution, the parties shall amend the agreement accordingly in good time and in mutual consultation.
2. If the parties agree that the agreement is to be amended and/or supplemented, this may influence the time for completion of the execution. BIP shall inform the Buyer of this as soon as possible.
3. If the amendment and/or supplement to the agreement have financial and/or quality consequences, BIP shall inform the Buyer thereof in advance.
4. If a fixed rate has been agreed, BIP shall indicate at the time the extent to which amending or supplementing the agreement will result in exceeding this fixed rate.
5. Notwithstanding the foregoing, BIP will not be able to charge additional costs if the amendment or the supplement is the consequence of circumstances that can be imputed to BIP.

### **Article 10 Payment**

1. Payment must be made within 14 days following the invoice date in a manner to be indicated by BIP in the currency of the invoice. In the event of payment by means of a Letter of Credit, this must comply with the requirements stated by BIP. Complaints regarding the size of invoices shall not suspend fulfilment of the Buyer's payment obligation.
2. If the Buyer fails to make payment within the time limit of 14 days, then the Buyer is automatically in default. Buyer is then liable to pay interest of 1% per month, unless the statutory interest is greater, in which case the statutory interest shall apply. The interest on the amount due will be calculated from

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the time that the Buyer is in default until the time that the entire amount has been paid in full.

3. In the event of liquidation, insolvency, seizure or moratorium on payments affecting the Buyer, BIP's claims against the Buyer shall fall due immediately.

4. BIP has the right to apply the payments made by the Buyer in the first place in diminution of its costs, in the second place in diminution of the interest that has fallen due, and finally in diminution of the principal sum and the current interest.

BIP can, without entering into default, refuse an offer of payment, if the Buyer indicates a different order of allocation for payments.

BIP can refuse payment of the principal if the interest due and the current interest are not thereby paid in full.

#### **Article 11 Retention of title**

1. All the items supplied by BIP, including any designs, sketches, drawings, films, software electronic files etc., remain the property of BIP until the time that the Buyer has complied with all the following obligations from the agreements concluded with BIP.

2. The Buyer is not authorised to pledge or encumber in any other manner the items that are subject to retention of title.

3. If third parties seize the goods supplied subject to retention of title, or intend to establish or avail themselves of any rights on such goods, the Buyer is obliged to inform BIP as soon as is reasonably possible.

4. The Buyer undertakes to insure the goods supplied under retention of title and keep them insured against fire, explosion and water damage and also against theft and to allow BIP to view the insurance policy at its first request.

5. The goods supplied by BIP which are subject to retention of title pursuant to the provisions of paragraph 1 of this Article may only be sold on in the context of normal business operations and may never be used as a means of payment.

6. In the event that BIP wishes to exercise its right of ownership as stated in this Article, the Client shall now grant unconditional and irrevocable permission in advance to BIP or its appointed third parties to

enter all places where BIP's property is situated and to take back such items.

#### **Article 12 Quality**

1. BIP warrants that the goods to be supplied fulfil the usual requirements and norms that can be expected of them and are free of any defects whatever.

2. If the goods to be supplied do not fulfil this quality, BIP will replace or take care of repairing the goods within a reasonable time following receipt thereof or, if returning the item is not reasonably possible, following written notification of the fault by the Buyer, at BIP's discretion. In the event of replacement, the Buyer undertakes in advance to return the item that was replaced to BIP and to transfer ownership thereof to BIP.

3. If the warranty provided by BIP concerns an item that was produced by a third party, the warranty will be limited to the warranty the maker provides for that item.

#### **Article 13 Collection costs**

1. If the Buyer is in default or fails to comply with one or more of his obligations, then all reasonable costs for obtaining full payment extra-judicially shall be at the expense of the Buyer. If the Buyer continues to fail to pay a sum of money in full, then he shall forfeit an immediately due penalty of 15% on the amount still owed, with a minimum of € 50.00 (fifty euros).

2. If BIP has incurred greater costs that were reasonably necessary, then these will also have to be paid.

3. Any reasonable judicial and enforcement costs incurred by BIP shall also be at the Buyer's expense.

4. The Buyer shall be charged interest on the collection costs.

#### **Article 14 Suspension and rescission**

1. BIP is authorised to suspend compliance with the obligations or to rescind the agreement, if:

- The Buyer does not comply with the obligations in the context of the agreement or does not comply with them in full.

- Following the conclusion of the agreement, BIP becomes aware of circumstances that give it good grounds to believe that the Buyer will not fulfil its obligations. If good grounds exist to believe that the Buyer will only fulfil its obligations in part or will not fulfil them properly, then suspension is permitted to the extent that the Buyer's failure justifies this.

- The Buyer was asked to furnish security to guarantee the fulfilment of his obligations resulting from the agreement and this security was not provided or was insufficient. As soon as security is furnished, the authorisation to suspend shall lapse, unless said fulfilment has been unreasonably delayed because of it.

2. BIP shall furthermore be authorised to dissolve the agreement or have the agreement dissolved if circumstances arise of such a nature that fulfilment of the obligations becomes impossible or can no longer be demanded in accordance with the requirements of reasonableness and fairness, or if other circumstances arise of such a nature that the unaltered maintenance of the agreement can no longer be demanded in all reasonableness.

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3. If the agreement is dissolved, BIP's claims against the buyer shall be forthwith due and payable. If BIP suspends fulfilment of its obligations, it shall retain its rights under the law and the agreement.

4. BIP always retains the right to claim compensation for damages.

#### **Article 15 Return of provided goods**

1. If BIP makes goods available to the Buyer for the execution of the agreement, the Buyer is required to return those goods within 14 days in their original condition, free of defects and in their entirety. If the Buyer does not comply with this obligation, then all costs arising from the same shall be at his expense.

2. If for whatever reason the Buyer after receiving a warning to this effect, continues to fail to perform the obligation mentioned in the previous paragraph, BIP will be entitled to reclaim the damages and costs arising therefrom including costs of repair and replacement from the Buyer.

#### **Article 16 Liability**

1. If the goods delivered by BIP are defective, BIP's liability vis à vis the Buyer shall be limited to the arrangements made in the present terms and conditions under "Quality".

2. If BIP is liable for direct damage, then said liability shall be limited to a maximum of twice the amount of the invoice value of the order, or at any rate that part of the agreement to which the liability relates. The liability shall at all times be limited to a maximum equalling the amount of the payment to be made by BIP's insurer in the occurring event.

3. Direct damage shall be understood to be exclusively:

- the reasonable costs incurred to establish the cause and the volume of the damage, insofar as said establishment relates to damage in the sense of the present terms and conditions;

- the reasonable costs possibly incurred to have BIP's faulty performance meet the conditions of the agreement, unless such faulty performance cannot be imputed to BIP;

- the reasonable costs incurred to prevent or limit the damage, insofar as the Buyer demonstrates that said costs have led to the limitation of direct damage as meant in the present General Terms and Conditions.

4. BIP shall never be liable for indirect damage, including consequential damage, loss of profit, lost savings and damage due to business stagnation.

5. The limitations of liability for direct damage contained in the present terms and conditions shall not apply if the damage is due to intentional act or omission or gross negligence on the part of BIP or its subordinates.

#### **Article 17 Transfer of risk**

The risk of loss of, or damage to the objects forming the subject of the agreement, shall pass to the Buyer at the moment when such objects are judicially and/or actually delivered to the Buyer and therefore actually placed at the disposal of the buyer or of third parties appointed by the Buyer.

#### **Article 18 Force majeure**

1. Parties shall not be held to fulfil any of their obligations if they are hindered to do so due to a circumstance through no fault of their own and which cannot be imputed to them by virtue of law, a legal action or generally accepted practice.

2. In these General Terms and Conditions, force majeure is understood to mean, along with that which is understood in this respect in law and jurisprudence, as all causes arising externally, foreseen or unforeseen, over which BIP cannot exercise any influence, but through which BIP is not able to fulfil its obligations. Industrial action at BIP's company shall also be understood to be a situation of force majeure.

3. BIP shall also be entitled to invoke force majeure if the circumstance rendering further fulfilment of the obligations impossible, commences after the point in time at which BIP should have fulfilled its obligation.

4. Throughout the duration of the circumstances of force majeure, parties shall be entitled to suspend the fulfilment of their obligations. If this period lasts for more than two months, either of the parties shall be entitled to dissolve the agreement without any obligation to pay the opposite party damages.

5. Insofar as BIP has in part already fulfilled or will be able to fulfil its obligations in the agreement at the time the force majeure commenced and it is possible to assign an independent value to the part of the contract that has or will be fulfilled, BIP is entitled to invoice the part already fulfilled or still to be fulfilled respectively. The buyer shall be required to pay this invoice as if it were a separate agreement.

#### **Article 19 Indemnities**

1. The Buyer shall indemnify BIP against any claim or action relating to intellectual property rights in materials or information supplied by the Buyer and used in the execution of the work commissioned.

2. If the Buyer makes data carriers, electronic files or software etc. available to BIP then the Buyer shall guarantee that the said data carriers, electronic files or software are free of viruses and defects.

#### **Article 20 Intellectual property**

1. The Buyer shall not be allowed to introduce changes to the goods and material provided, unless agreed upon otherwise in advance in writing.

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2. BIP will retain intellectual property rights to designs, sketches, drawings, films, software and other material or electronic files, possibly produced by BIP in the context of the agreement, irrespective of the fact whether they have been handed over to the Buyer or to third parties, unless agreed upon otherwise in advance in writing.

3. All documents, such as designs, sketches, drawings, films, software, electronic files etc. provided by BIP, are intended exclusively for use by the Buyer and must not be reproduced, made public or disclosed to third parties by the Buyer without prior written consent from BIP.

#### **Article 21 Confidentiality**

1. Both parties are bound to keep secret all confidential information they receive within the scope of their agreement from each other or from another source. Information shall be considered to be confidential if the other party has indicated this is the case or if the confidential character results from the nature of the information.

2. If a statutory provision or a judicial decision compels BIP to disclose confidential information to third parties designated by law or by the competent court and BIP cannot for that purpose avail itself of a legal right to refuse to give evidence or have such a right acknowledged or allowed by the competent court, BIP will not be required to pay damages or compensation and the other party will not be entitled to demand the rescission of the agreement on the grounds of any damage resulting from the said circumstance.

3. BIP retains the right to make use of the increased knowledge gained from implementing work for the Buyer for other purposes, insofar as this does not involve confidential information being disclosed to third parties.

#### **Article 22 Disputes**

1. The parties will submit all disputes exclusively to the competent court in the legal district of Breda, unless BIP has submitted such dispute to another court.

2. The parties shall only have recourse to the courts after they have made the utmost efforts to resolve the dispute by mutual agreement.

#### **Article 23 Governing law**

Dutch law shall apply to each and every agreement between BIP and the Buyer. The Vienna Sales Convention is hereby explicitly excluded.

Article 24 Changes to the general terms and conditions, interpretation and location

1. These general terms and conditions are located on the website [www.BIP.nl](http://www.BIP.nl). The General Terms and Conditions will also be sent on request.

2. If one or more provisions in the present General Terms and Conditions is or becomes unenforceable, then the other provisions shall remain fully applicable. The parties undertake to replace the unenforceable provision with a provision that is enforceable and which deviates as little as possible from the unenforceable provision.

3. BIP is in all circumstances entitled to amend the present General Terms and Conditions. BIP shall notify the Buyer at least one month before the amendments enter into force by means of a notification by e-mail or letter of the contents of the amendments. BIP shall publicise the amended terms and conditions at least one month before these enter into force on its website. The parties are bound by the amended terms and conditions from the day that these enter into force.

4. If the Buyer is unwilling to accept such an adjustment to the General Terms and Conditions, the Buyer shall be entitled within seven working days from the notification referred to in Article 24 para.3 to give notice in writing terminating the Agreement with effect from the date stated in BIP's notification on which the amended terms and conditions would become effective.

5. The Dutch version of these General Terms and Conditions shall prevail at all time in case of disputes with regard to the interpretation and purpose of these terms and conditions.

6. The applicable version is the version that was deposited at the time of the conclusion of the agreement in question.

Roosendaal, April 2008

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