

## General Terms and Conditions of B&G Amsterdam B.V., version dated 2014

*Seller:* B&G Amsterdam B.V., a private limited company, with registered office at 1073 SL Amsterdam, registered with the Netherlands Chamber of Commerce under reference 34196811;

*Buyer:* the purchaser acting in the course of a business or profession;

*Force majeure:* in addition to the definitions contained in legislation and case law, all external circumstances, whether or not foreseen, over which the Seller has no control, and as a result of which the Seller is unable to comply with its obligations, including a strike within the Seller's or third party's business, postal strikes, traffic congestion, power cuts or computer breakdowns, or breakdown in supplies by third-party suppliers.

### Article 1. General

1. These General terms and Conditions (the 'General Conditions') govern all offers and contracts between the Seller and the Buyer unless expressly excluded in writing by the Parties.
2. These General Conditions also govern all contracts with the Seller for the performance of which the Seller engages the services of any third party.
3. The scope of any general terms and conditions of the Buyer is expressly excluded, unless the Parties agree otherwise in writing.
4. If the Seller enters into more than one contract with the Buyer, all subsequent contracts are governed by these General Conditions even if this is not explicitly stated in those contracts;
5. If any provision of these General Conditions is void or voidable, the other provisions remain fully enforceable.

### Article 2. Offers/orders/prices

1. All offers in whatever form are subject to contract, unless the offer specifies a deadline for acceptance.
2. If a natural person enters into a contract on behalf of or at the cost of any legal entity, such person declares that he/she is authorized to do so. This person, alongside the other, is jointly and severally liable for all obligations under the contract.
3. A contract is not binding until the Seller has accepted in writing an order from the Buyer, or the goods are actually delivered ex warehouse to the Buyer by the Seller or a third party engaged by the Seller, such as a transport company.
4. In the case of an oral contract, the invoice is deemed to fully and accurately set out the terms agreed, unless any complaint is made within 10 days of the invoice date.
5. An order may be placed by telephone, fax, e-mail, or ordinary post.
6. The prices quoted in the offers, on the website, in catalogues, and on price lists, are for delivery ex warehouse, in euros, excluding VAT and other government duties, insurance, and postage, packaging, transport, and administration costs, unless expressly agreed otherwise.
7. The Seller may pass on any price increases after two months if, between the offer/acceptance and delivery there is any increase in VAT or other statutory or cost price increase.
8. The Seller is entitled to increase its prices each year by at least a correction for inflation of 2%.
9. The Seller may refuse an order or attach conditions to an order without the need to give reasons.

### Article 3. Delivery

1. Delivery will be ex warehouse, unless the Parties agree otherwise.
2. The Seller is entitled to require an advance payment. After making the advance payment, the goods will be delivered to the Buyer, unless the Parties have agreed otherwise.
3. The Buyer must purchase the goods at the moment the goods are delivered by or on behalf of the Seller, or at the moment they are available to the Buyer in accordance with the contract.
4. If the Buyer refuses or otherwise fails to provide the information or instructions necessary for delivery, the Seller is entitled to store the goods at the expense and risk of the Buyer.
5. If delivery is c.o.d., the Seller will pass on c.o.d. charges to the Buyer.
6. Delivery will be made at the delivery address most recently communicated by the Buyer to the Seller.

7. If the Seller has indicated a delivery period, this is approximate only, and not a deadline. If delivery is not made within this period, the Buyer should issue the Seller with written notice of default specifying a further reasonable period for delivery.
8. If the Seller requires information from the Buyer to enable performance of the contract, the delivery period will not start to run until the Buyer has supplied this information to the Seller.
9. The Seller is entitled to deliver the goods in parts, and to invoice separately for these part-deliveries.
10. If any item cannot temporarily or permanently be supplied, the Seller will notify the Buyer accordingly no later than one month after the placing of the order for such item.

#### **Article 4. Models/images**

1. The models, images, numbers, sizes, weights and descriptions contained in the catalogues, offer, advertisements, and price lists are for illustrative purposes only.
2. If a Buyer is shown a sample, this sample is assumed to be for illustrative purposes only unless it is expressly agreed that the item to be delivered will entirely match the sample.
3. Samples sent by the Seller to the Buyer on request may only be returned in undamaged condition and in their original packaging. The Seller will charge the Buyer the full catalogue price of the samples. If correctly returned, the amount paid for the samples will be credited.
4. The following situations do not entitle the Buyer to make a complaint:
  - deviations in colour and size less than 10%.
  - any type-setting/printing errors on the website, or in a catalogue, offer, or price list.

#### **Article 5. Duty to examine goods, and complaints**

1. The Buyer must examine the goods as soon as they are delivered.
2. The Buyer must in this way ascertain whether the quality and quantity of the delivered goods is in accordance with the contract.
3. Any defects and discrepancies must be noted on the consignment note or packing slip, failing which the goods are deemed to satisfy the terms of the contract.
4. Any visible defects must be notified in writing to the Seller within 8 working days following delivery.
5. If a complaint is filed in time in accordance with the preceding section, the Buyer is nevertheless obliged to purchase and pay for the goods in question.
6. The Seller is always entitled to investigate the complaint.
7. If the Buyer wishes to return defective goods it must obtain the prior written consent of the Seller.
8. Goods must be returned postage paid in an undamaged condition, in their original packaging.
9. If a complaint is founded, the Seller will replace the delivered goods unless the Buyer sends written notice to the Seller demonstrating that it would no longer make sense to do so. The Seller, however, is only ever liable within the limitations of Article 15.
10. A complaint about an invoice must be notified to the Seller within 10 days of the invoice date, failing which the invoice is deemed to have been approved.

#### **Article 6. (Non-) payment**

1. Payment must be made in cash, or in advance in response to an invoiced advance payment, or within 14 days of the date of an invoice, in the manner specified by the Seller in euros. A complaint about the amount invoiced will not suspend the payment obligation.
2. If the Buyer fails to pay within the agreed period, it is automatically in breach of contract. The Buyer is then liable to statutory commercial interest pursuant to Book 6 Article 119 (a) of the Dutch Civil Code. The interest on the debt is calculated as from the date the Buyer is first in breach up to the date of payment of the full amount of the accrued debt.
3. If payment is not made within the said payment term of 14 days, the Buyer will be sent a reminder, requiring payment in 8 days. If payment is still not made within those 8 days, the debt will be put in the hands of a debt collection agency. A sum of €2.50 will be charged as administration costs for each reminder.
4. Payments will first be used to pay costs, then to pay the accrued interest, and finally to pay the principal sum and continuing interest.
5. In the event of liquidation, insolvency or an application for insolvency, consent for the Buyer to enter into a debt rescheduling scheme under the Natural Persons Debt Rescheduling Act, an attachment order or a provi-

sional or final moratorium in favour of the Buyer, the Seller's claims against the Buyer become immediately due and payable.

#### **Article 7. Debt recovery costs**

1. If the Buyer fails to comply with any of its obligations on time or at all, all reasonable costs incurred in recovering the debt outside court are payable by the Buyer. The debt recovery costs are calculated in accordance with the rates set out in the *Voorwerk II* report.
2. If the Seller has incurred higher costs than these, and these higher costs were reasonably necessary, these are also recoverable from the Buyer. Any judicial and execution costs are also payable by the Buyer.
3. Even if a court finds that the Buyer has acted in the capacity of a natural person (consumer) all debt recovery costs will nevertheless be calculated in accordance with the Extrajudicial Debt Recovery Costs Decree 2012 (*Besluit Buitengerechtelijke Incassokosten 2012*).
4. If the Buyer can prove to be acting as a consumer, a further reminder letter will be sent specifying a further period for payment of 14 days, and without liability for extrajudicial debt recovery costs.

#### **Article 8 – Cancellation rights of a consumer Buyer**

1. In the case of a remote purchase, a consumer Buyer has the opportunity to cancel the contract within a period of 14 days without the need to specify a reason. This cooling-off period commences the day following receipt of the goods by the consumer Buyer or a representative of the consumer Buyer appointed and notified in advance to the Seller by the consumer Buyer.
2. During this cooling-off period, the consumer Buyer must handle the goods and the packaging with care. The goods may only be unpacked or used to the extent that is necessary for the consumer Buyer to be able to decide whether to keep the goods. If the consumer Buyer relies on the right to cancel, the goods and all related materials must be returned to the Seller - so far as possible in their original condition and original packaging – in accordance with the reasonable and clear instructions issued by the Seller.
3. The right to cancel, the right to suspend, and the right of set-off is excluded in respect of a Buyer acting in the course of a business or profession.

#### **Article 9 – Costs in the event of cancellation**

1. If the consumer Buyer relies on the right to cancel, the Buyer is liable for no more than the cost of return postage.
2. If the consumer Buyer has paid any sum, the Seller will repay this sum as soon as possible, but in any event within 14 days after the return of the goods or the cancellation.

#### **Article 10 – Exclusion of cancellation rights**

1. The Seller excludes the right of the consumer Buyer to cancel in the circumstances listed in section 2 of this article. This exclusion of cancellation rights only applies if the Seller has made this clear in the offer, or at any rate at the time the contract was entered into. The relevant provisions in these General Conditions are deemed to constitute sufficient notice of exclusion.
2. Exclusion of cancellation rights applies to goods:
  - a. that are made by the Seller in accordance with the specifications of the consumer Buyer;
  - b. that are clearly of a personal nature;
  - c. that by their nature cannot be returned;
  - d. whose price is subject to fluctuations on the financial market over which the Seller has no control;
  - e. that are audio and video recordings and computer software in respect of which the consumer Buyer has broken the seal;
  - f. that are books containing graphic designs: a clear description of the content, including examples, of such books is available online or on the business premises.

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

1. All goods supplied by the Seller remain the property of the Seller until the Buyer has complied with all obligations under all contracts with the Seller.
2. The Buyer is not entitled to pledge, lease, sell-on to customers outside the Benelux, or in any other way to encumber goods that are subject to such retention of title.

3. If any third party secures an attachment order upon goods subject to a retention of title, or wishes to attach or enforce such rights, the Buyer must notify the Seller of this fact as soon as possible.
4. Goods supplied by the Seller under the retention of title as described in section 1 of this article may not be sold on except in the normal course of business and may not be used as a form of payment.
5. If the Seller wishes to exercise its rights under the retention of title described in this article, the Buyer gives unconditional and irrevocable consent to the Seller or to such third part as is designated by the Seller to gain access to any place where the property of the Seller is located and to recover those goods.

#### **Article 12. Suspension and termination**

1. The Seller is entitled to suspend performance of its obligations or to terminate the contract if:
  - the Buyer fails to comply with its contractual obligations in full, on time, or at all;
  - if, once the contract is entered into, the Seller learns of circumstances that justify the fear that the Buyer will not comply with its contractual obligations in full, on time, or at all. If there is justified fear that the Buyer may not comply with all its obligations, or do so correctly, suspension is only possible insofar as this is justified by the extent of the breach;
  - The Buyer was required at the time the contract was entered into to provide security for compliance with its contractual obligations and has failed to provide this security, or adequate security. Once the security is provided, the authority to suspend lapses, unless compliance with the requirement was unreasonably delayed.
2. The Seller is also entitled to terminate the contract if such circumstances arise which by their nature mean that compliance with the contract is no longer possible or as a result of which, according to the principles of reasonable and fairness, compliance can no longer be expected, or if such other circumstances arise that are of such nature that it would be unreasonable to expect compliance with the contract without changing its terms.
3. If the contract is terminated, the Seller's claims against the Buyer become immediately due and payable. If the Seller suspends performance of its obligations, it retains its other statutory and contractual rights.
4. The Seller reserves the right to claim compensation.

#### **Article 13. Termination by the Buyer**

1. If, after a contract has been entered into, but before delivery of any goods, the Buyer wishes to terminate the contract, 10% of the agreed order price plus VAT will be charged to the Buyer as a termination fee, without prejudice to the Seller's right to claim full compensation, including loss of profits.
2. Notice to terminate must be sent by registered post.
3. If the Buyer has already paid to the Seller all or part of the order price, this money will be repaid to the Buyer, less 10%.

#### **Article 14. Guarantee**

1. If it has been agreed in writing, the goods supplied by the Seller meet as a minimum the standards and specifications set by Dutch legislation.
2. This guarantee is limited to:
  - manufacturing faults, and thus not to damage resulting from wear and tear or incorrect, careless, or inexperienced use;
  - the manufacturer's guarantee.
3. This guarantee ends if the goods:
  - have been sold on, unless the Parties have expressly agreed otherwise;
  - have been processed, altered, or repaired by a third party;
  - have been used for a purpose other than that described in the instructions for use;
  - have been used in a manner other than described in the instructions for use.
4. The Buyer cannot rely on the provisions of this guarantee unless and until it has satisfied all its contractual obligations to the Seller.

#### **Article 15. Liability**

1. If the Seller is held liable for direct loss, then such liability is limited to the no more than the sum paid out by the Seller's insurers, or the sum invoiced, or to the part of the sum invoiced pertaining the goods to which the liability relates.

2. The Seller is not liable for indirect loss, including consequential loss, loss of profits, missed savings, and loss resulting from business stoppage;
3. The Buyer indemnifies the Seller against any third-party claim based on loss resulting from the performance of the contract for which the Buyer is liable.
4. The Seller is not liable for loss resulting from the incorrect use of the goods, use that is not in accordance with the instructions for use, or use otherwise than for the intended purpose of the goods.
5. The Seller is not liable for loss resulting from any advice it has given. Advice is only given on the basis of facts and circumstances known to the Seller, and in consultation with the Buyer, based on and guided by the intended purposes of the Buyer.
6. The limitations of liability in respect of direct loss set out herein do not apply in the event of any deliberate act or gross negligence on the part of the Seller.

#### **Article 16. Transfer of risk**

1. The risk of loss of, or damage to, goods supplied under a contract transfers to the Buyer as soon as they have been delivered (legally or actually) to the Buyer and are thus transferred to the control of the Buyer or any third party designated by the Buyer.
2. If the Seller is responsible for the transport/postage of the goods supplied under a contract, this is done entirely at the risk and expense of the Buyer, unless the Parties have agreed otherwise.

#### **Article 17. Force majeure**

1. Neither Party is obliged to comply with any obligation that it is prevented from performing as a result of any circumstance that does not arise from a deliberate act or gross negligence on the part of the Party seeking to rely on force majeure, or any circumstance for which, by virtue of any law, juridical act, or common practice, it cannot be held liable.
2. The Seller is also entitled to rely on force majeure if the circumstance that prevents compliance, or further compliance with the contract, arises even after the Seller ought to have complied with an obligation.
4. During the period of force majeure, the Parties may suspend their obligations under the contract. If this period continues for more than two months, either Party is entitled to terminate the contract, without thereby being liable to compensate the other Party.
5. Insofar as at the time the force majeure arises the Seller has complied with some of its contractual obligations, or will be able to comply with these, and such performed part, or part that can be performed, has an independent value of its own, the Seller is entitled to invoice separately for the parts of the contract that have been performed or that can still be performed.
6. The Buyer must pay this invoice as if it related to a separate contract.

#### **Article 18. Industrial and intellectual property rights**

1. The Seller is legally entitled to the industrial and intellectual property rights to the content and form of offers, samples, designs, descriptions, advice, etc.
2. Following payment to the Seller of the sum owed under the contract, the Buyer acquires only a right of use.
3. The Buyer is not permitted to use the goods or services supplied by the Seller for promotional purposes, without the express consent of the Seller.
4. The Buyer may not use the processed goods for any purpose other than that for which they are intended.
5. In the event of any breach of the provisions of this article, the Buyer is liable to pay the Seller a penalty of €5,000 per breach. This penalty is payable in addition to any liability for compensation claimed under the law.
6. Where relevant, the Buyer guarantees that it is entitled to use the label/logo, together with the samples and/or drawings it supplies to the Seller, and indemnifies the Seller against any third-party claim based on any alleged infringement of any intellectual or other property rights.

#### **Article 19. Jurisdiction/legal forum**

1. The court with jurisdiction in the district in which the Seller has its registered office has exclusive jurisdiction to hear any dispute between the Parties, unless any mandatory provision of law specifies a different court.
2. All contracts between the Seller and the Buyer are governed by Dutch law. The provisions of the Vienna Sales Convention are hereby expressly excluded.