

**Bata Nederland B.V.**

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***General Terms and Conditions of Sale, Delivery and Payment for the private company with limited liability BATA Nederland BV, with its registered office in Best (Netherlands).***

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**Article 1: General/Applicability**

- 1.1 For the purposes of these general terms and conditions, the following terms, written with a capital letter, are defined as follows:
- General Terms and Conditions: the current general terms and conditions
  - Bata: the user of the General Terms and Conditions
  - Customer: every legal entity or natural person to which/whom Bata addresses an offer, as well as every legal entity or natural person receiving an order or assignment from Bata, and/or the legal entity or natural person with which/whom Bata enters into an agreement or with which/whom Bata is involved in any legal relationship, regardless of whether or not this involves a purchase agreement.
  - Products: products, services and contracting of work by Bata
- 1.2 The General Terms and Conditions apply to all of Bata's offers, quotations, announcements, orders and agreements, with regard to the delivery of products and/or components thereof as well as the performance of work related thereto, and the provision of services, unless expressly agreed otherwise in writing. To the extent Bata employs third parties for the fulfilment of its obligations pursuant to any agreement, these General Terms and Conditions also apply to these activities, unless explicitly agreed otherwise.
- 1.3 By placing an order and/or taking delivery of Products, the Customer accepts the applicability

of these General Terms and Conditions and is considered to tacitly agree with the exclusive applicability of such. The applicability of the Customer's purchasing or other terms and conditions is explicitly rejected, in spite of any prior reference by the Customer to its own terms and conditions.

- 1.4 Deviations or additions to these General Terms and Conditions may only be agreed with us in writing.
- 1.5 In the event any provision from these General Terms and Conditions is null and void or should be declared null and void, then the remaining provisions in these General Terms and Conditions will remain in full force. In such a case, Bata and the Customer will consult with one another in order to agree upon new provisions to replace the provisions which were null and void or declared null and void, whilst ensuring that the aim and purpose of the null and void provisions or provisions which were declared null and void remain as unaffected as possible.

**Article 2: Offers**

- 2.1 All offers and quotations (including appendices) provided by Bata are free of obligation unless otherwise agreed in writing. Offers or price quotations may be expressed verbally or in writing.
- 2.2 All offers provided by Bata relate exclusively to the Products specified in the offer, and do not automatically apply to subsequent deliveries. In the event of the provision of services or contracting of work, offers are based on the fulfilment of the agreement under normal circumstances and during normal working hours.
- 2.3 Bata reserves the right to refuse assignments and/or orders or to make deliveries subject to cash-on-delivery or a bank guarantee.

### Article 3: Formation

- 3.1 Agreements are only binding for Bata and the Customer once the Customer accepts the offer from Bata in writing. Bata is entitled to revoke an offer within two (2) days of receiving the written acceptance of the offer, without this resulting in the creation of any rights for the Customer.
- 3.2 Any additional agreements will only bind Bata at the time these are confirmed in writing by Bata. Bata's records will be the determining factor in this case.
- 3.3 In the event the Customer makes an offer or places an order and/or issues an assignment, the agreement will only be formed at such time that Bata accepts this offer or order and/or this assignment in writing. In the event the offer, the order and/or the assignment are not accepted in writing within eight (8) days of receipt, this will be deemed not to have been accepted by Bata. An agreement will only be considered to be formed once Bata has started to fulfil the agreement after the receipt of the order and/or assignment. The burden of proof regarding the nature and scope of the orders and/or assignment lies with the Customer.
- 3.4 With respect to agreements with buyers' cooperatives formed for the benefit of the members affiliated with such cooperatives, the members to which deliveries are ultimately made also qualify as Customers. The General Terms and Conditions also apply in full to these members. Both the buyers' cooperative as well as the members involved are bound by and liable for the fulfilment of the obligations arising from the agreements concluded, including yet not limited to payment obligations.

### Article 4: Price

- 4.1 The prices indicated by Bata are exclusive of turnover tax and other government levies applicable to the sale and/or delivery and/or performance of the agreement, and are based on delivery on a DDP/free domicile basis, unless otherwise agreed in writing.
- 4.2 Bata may always pass on changes in labour costs, the cost price of raw materials and/or materials, increases in and/or the addition of new taxes and levies to the Customer.
- 4.3 Upon receiving notification of any changes in price referred to under 4.2, the Customer is entitled to terminate the agreement in the

event the increase in price stipulated by Bata occurs within three months of the conclusion of the agreement. This possibility to terminate is excluded in the event the increase is implemented as required by law.

- 4.4 In the event additional and/or modified arrangements are agreed after the formation of the agreement, Bata may invoice these as additional work. Additional work includes all work and deliveries which are not included in the offer.
- 4.5 Any default or failure on the part of the Customer, including the failure to satisfy any obligation arising for the Customer from any agreement or to grant its cooperation with regard to the fulfilment of the agreement, will effectively end any default or failure on the part of Bata. During the default on the part of the Customer, it is not authorised to take any measures related to execution. Bata will invoice the Customer for any costs arising for it as a result of the Customer's default or failure.
- 4.6 Packaging is included in the price and will not be invoiced separately. Packaging will not be accepted in return.
- 4.7 Costs of loading and unloading, storage and/or transport of the raw materials and/or materials made available by the Customer, models and/or tools and/or other goods may be invoiced to the Customer separately.
- 4.8 In the event the provisions of consumer sale contained in Book 7 of the Dutch Civil Code [BW] apply, the costs of delivery and/or work in connection with the purchase agreement, including those costs reported in Articles 4.6 through 4.7, will be reported separately by Bata at the time of the formation of the agreement or Bata will provide information regarding the basis on which it calculates these.

### Article 5: Delivery

- 5.1 The delivery time will commence on the latest of the following dates:
- the date on which the agreement is formed, unless a different date is explicitly agreed in writing, and in taking into consideration the provisions under b through d of this article.
  - the date Bata receives the documents, information, permits and so forth necessary to the fulfilment of the agreement.

- c. the date the formalities are completed necessary to start the execution of the agreement.
- d. the date Bata receives any advance payment which, pursuant to the agreement, must be paid prior to the start of the work.

5.2 Reported delivery times and/or completion dates may never be considered firm deadlines unless otherwise agreed in writing. In the event of a late delivery and/or completion, Bata must be provided with a written notice of default including a reasonable term to satisfy the obligation. A reasonable time is always the period of time standard in the industry for this agreement.

5.3 The reported delivery times and/or completion dates are based on the working conditions valid at the time the agreement is concluded, and on the timely delivery of the materials and/or components ordered by Bata for the execution of the work. In the event a delay arises through no fault of Bata's as a result of a change in the aforementioned working conditions or as a result of a delay in the delivery of the materials and/or components ordered in a timely manner for the execution of the work, the reported delivery times and/or completion dates will be postponed to the extent this is necessary, without this conferring any rights upon the Customer to demand full or partial restitution or compensation for any damage it has suffered as a result of the delay.

5.4 If, after being provided with notice of default specifying a reasonable term as referred to under 5.2, Bata remains in default in respect of the delivery and/or completion, the Customer is entitled to elect to continue to demand fulfilment or to terminate all or part of the agreement. The Customer must provide a statement in writing to this effect within a period of five days after the delivery should have taken place, pursuant to the provisions under 5.2 and this article. Bata's liability for damage is provided for in paragraph 10.1.

5.6 Delivery is to be carried out carriage paid/DDP unless explicitly agreed otherwise in writing.

5.7 The risk of the goods will pass to the Customer at the time of delivery, even if the ownership of the goods has not yet been transferred. If a circumstance arises due to the Customer's failure to perform that renders due performance impossible, in whole or in part, this will not be attributed to Bata, unless Bata through its own fault or that of one of its

employees has failed to provide the duty/level of care that could be demanded of it under the given circumstances.

## **Article 6: Complaints**

6.1 The Customer is obliged to check the goods immediately upon delivery for any shortages or damage, or to perform this check after notification by Bata that the products are at the Customer's disposal. Any shortages or damage present at the time of delivery must be reported by the Customer on the delivery note, invoice and/or transport documents, failure of which to do so will result in the assumption that the Customer has accepted the delivery. Abnormalities and defects must be reported to Bata in writing, no later than seven (7) working days after delivery.

6.2 Minor variations in the colour or model of the product delivered which are customary in the industry will be considered acceptable. All the sizes, quantities and/or other information provided to Bata by the Customer are at its own risk.

6.3 The Customer may no longer invoke any rights regarding a failure in performance if it does not report this to Bata in writing within seven (7) working days of having discovered the defect or after it should reasonably have discovered the defect.

6.4 If it is not possible to discover a defect during inspection within the period referred to under 6.1, the Customer must submit its objection to Bata in writing within seven (7) working days of having discovered the defect or after it should reasonably have discovered the defect.

## **Article 7: Payment**

7.1 Unless agreed otherwise in writing, payment will be executed without any discounts and/or deductions which are not authorised by Bata, and must be carried out via transfer to Bata's bank account or, if agreed in writing, in cash.

7.2 Payment must be executed within the agreed term which applies as a firm deadline. After the expiry of the term, Bata will charge the statutory commercial interest over the principal amount due.

7.3 If the Customer fails to execute payment or to do so on time, or to observe any of its other obligations, the Customer will be obliged to pay

all the out-of-court and court collection costs incurred by Bata, estimated at 15% of the principal amount due and subject to a minimum of EUR 50.

7.4 Payments made by the Customer will always serve first to pay all interest and costs owed and subsequently to settle the oldest payable invoices, even if the Customer states that payment relates to a more recent invoice. The Customer is not authorised to demand compensation or settlement.

7.5 Payment must be executed in Dutch currency unless otherwise agreed in writing that payments may be made in a foreign currency, and in such cases, payments will be made at the exchange rate valid on the date of payment unless otherwise agreed in writing. The date of payment is the date on which the bank and/or giro institution credits Bata's account, or the date on which Bata has received the amount due in cash.

7.6 Bata is entitled at all times to offset its claims against the Customer by the amount the Customer owes Bata, provided the statutory requirements for compensation are satisfied.

#### **Article 8: Reservation of title**

8.1 Without prejudice to the provisions of these General Terms and Conditions, all the Products Bata delivers will remain the property of Bata at all times until such time that the Customer has satisfied all its obligations under the Agreement it has concluded with Bata, and furthermore, provided Bata has no other claims against the Customer which fall within the scope of Section 3:92 of the Dutch Civil Code [BW]. Prior to having executed payment in full, the Customer is not authorised to pledge or transfer ownership of the Products to third parties, with the exception of Products for which a transfer is customary within the scope of the normal operation of its company.

#### **Article 9: Security, suspension and right of retention**

9.1 During or after concluding an agreement, Bata is entitled to demand advance payment or security from the Customer if the Customer fails to satisfy its payment or other obligations, or in the event Bata has a reasonable fear that the Customer will fail to satisfy these obligations. Until such advance payment has been

executed, Bata is entitled to suspend its obligations under the agreement.

9.2 Bata is entitled to exercise a right of retention with respect to all goods to which the performance of the agreement relates, or those it actually retains within the scope of the agreement should the Customer fail to pay all or part of the costs associated with the fulfilment of the agreement. This also applies in respect of those costs Bata has had to incur regarding the duty of care which must be observed with regard to these goods.

#### **Article 10: Liability**

10.1 Bata will warrant that the goods delivered are suitable for normal use unless atypical use is provided for in writing in a clause in the agreement. Bata is not liable for normal wear and tear, ageing, improper use, improper treatment or insufficient maintenance.

10.2 Bata's total liability arising from an attributable breach in the fulfilment of the agreement or based on any other reason, specifically including every shortcoming in the fulfilment of a guarantee obligation agreed with the Customer, is limited to the compensation for direct damage up to a maximum amount of the price stipulated under that particular agreement (excluding VAT).

10.3 The supplier's liability for damages as a result of death, bodily injury or material damage to property will never exceed € 1,250,000 (one million two hundred and fifty thousand Euros).

10.4 Bata's liability for indirect damage, consequential damage, lost profits, lost savings, reduced goodwill, damage due to business interruption, damage resulting from claims from the Customer's customers, damage associated with the Customer's use of goods or materials prescribed by Bata from third parties, and damage associated with suppliers the Customer has instructed Bata to engage.

10.5 The exclusions and limitations stated in the Articles 10.1 through 10.3 will lapse if and insofar as the damage is the result of intent or wilful recklessness on the part of Bata's management.

10.6 Unless fulfilment by Bata is permanently impossible, Bata's liability due to attributable breach in the fulfilment of an agreement will only arise if the Customer provides Bata with written notice of default immediately, also indicating a reasonable term for remedying the breach, and if Bata continues to fail imputably

in the fulfilment of its obligations even after the expiry of this term. The notice of default must contain the most complete and detailed description of the breach possible in order to provide Bata with sufficient opportunity to respond adequately.

- 10.7 The condition for any right to compensation is always that the Customer must report the occurrence in writing to Bata as soon as possible after the breach occurs. Every claim for damages against the supplier will expire by the lapse of six (6) months after the claim arises.
- 10.8 The provisions of this article as well as all other limitations and exclusions of liability mentioned in these general terms and conditions also apply to all legal entities and natural persons Bata engages in the fulfilment of the agreement.

#### **Article 11: Force majeure**

11. Force majeure is defined as circumstances that prevent the fulfilment of an obligation, and which may not be attributed to Bata. These circumstances also include (if and to the extent these circumstances make the fulfilment of an obligation impossible or impede this unreasonably) strikes, government measures that prevent Bata from fulfilling its obligations in time and/or properly; a general lack of necessary raw materials and other products or services required to realise the agreed performance; unforeseeable stagnation at suppliers' companies or other third parties on which Bata depends; the unavailability (or insufficient availability in terms of quantities) of raw and other materials necessary for the production of the products to be delivered; circumstances in which Bata is not provided with services that it requires in connection with the services or products it must also provide, or does not receive such in time or properly; excessive absence due to illness; terrorist attacks; limitation or discontinuation of the supply of services by public utility companies; fire; stagnation due to time lost through frost or other weather conditions and general transport problems.
- 11.2 Bata is also entitled to invoke its rights under force majeure if the circumstance that prevents performance or further performance occurs after Bata should have fulfilled its obligation.
- 11.3 During force majeure events, Bata's delivery and other obligations will be suspended. If the period of force majeure preventing Bata from fulfilling its obligations persists longer than

three months, both parties will be entitled to terminate the agreement without any obligation in that case to pay compensation for damage.

- 11.4 If, at the time a force majeure event occurs, Bata has already satisfied part of its obligations or is only capable of satisfying part of its obligations, it is entitled to invoice the portion of the goods it has delivered and/or is capable of delivering, and the Customer is required to pay this invoice as if it involved a separate agreement.

#### **Article 12: Intellectual property / confidentiality**

- 12.1 Bata reserves all intellectual and industrial property rights including yet not limited to copyrights, trademark rights, patent rights, database rights, model rights, trade name rights, as well as know-how rights.
- 12.2 All documents and information provided by Bata such as recommendations, sketches, drawings and so forth remain the property of Bata, and are only destined for use by the Customer within the scope of the agreement concluded between Bata and the Customer. These documents may not be reproduced, made public, exploited or communicated to third parties without prior written permission from Bata.
- 12.3 Bata reserves the right to use the knowledge it acquires as a result of carrying out the work for other purposes, to the extent this does not involve communicating any confidential information regarding the Customer to third parties.
- 12.4 If Products are delivered or produced on the grounds of specifications provided by the Customer, the Customer guarantees that this does not violate any rights belonging to third parties. The Customer will indemnify Bata from all claims from third parties in this regard, and as a result thereof and in connection therewith, will compensate Bata for any damage the supplier has suffered.

#### **Article 13: Confidentiality**

- 13.1 The Customer is subject to comply with the statutory obligations which apply to it with regard to observing secrecy regarding all confidential information that it acquires within the scope of the agreement from Bata or any other source. Information will be considered confidential if it has been communicated as such by Bata or if this follows from the nature

of the information. In all cases, intellectual property rights, know-how and company information all qualify as confidential information.

**Article 14: Applicable law and competent court**

- 14.1 The laws of the Netherlands apply to all agreements to which these terms and conditions apply in whole or in part.
- 14.2 The applicability of the Vienna Sales Convention (CISG) is explicitly excluded, as are future international regulations relating to the sale of immovable property, the effect of which may be excluded by the parties.
- 14.3 All disputes arising from offers and agreements, however named, will be submitted for adjudication to the District Court of Eastern Brabant (Oost-Brabant) in the first instance, to the exclusion of every other court. Bata will however remain authorised to submit disputes to the court competent to hear such under the law.