

GENERAL TERMS AND CONDITIONS OF SABA DINXPERLO BV

- 1. Definitions**
 - 1.1. GTCs: these general terms and conditions of User;
 - 1.2. Offer: Every offer User makes to a (potential) customer.
 - 1.3. Customer: All parties which conclude an agreement with User, within the meaning of Clause 1.7, or which receive an offer from User, within the meaning of Clause 1.2.
 - 1.4. Days: All calendar days;
 - 1.5. User: SABA Dinxperlo BV, based in (7091 DC) Dinxperlo at Industriestraat 3;
 - 1.6. Depot: the commercial properties and/or grounds and/or other locations of User at which User segregates goods for delivery and prepares them for dispatch.
 - 1.7. Agreement: Any agreement entered into by the User with a Customer and all ensuing and/or related agreements and/or commitments, expressly including advice issued by the User to a Customer;
 - 1.8. Complaints: All the Customer's grievances concerning the quality or quantity of Goods;
 - 1.9. Goods: Movable goods to be delivered and/or services to be provided by the User under the Agreement.
- 2. Application**
 - 2.1. All agreements concluded by the User are subject to these GTCs. All Offers which the User makes are also subject to these GTCs.
 - 2.2. Regardless of the date of notification, Agreements concluded with the User and Offers made by the User shall not be governed by any other GTCs, such as those of the Customer, without the User's explicit consent, issued to the Customer in writing, to the application of such other GTCs. In no circumstances shall such consent denote that other Agreements between the User and the Customer are subject to the Customer's GTCs.
 - 2.3. The stipulations of these GTCs shall not apply if and in as far as such is prohibited by statutory requirements. If a stipulation is nullified on these grounds in certain circumstances, the regulation which is most favorable to the User shall apply and all other stipulations shall remain fully in force.
 - 2.4. In all other cases, departures from these GTCs are permissible only with written consent signed by the User and the Customer.
 - 2.5. In these GTCs, written consent includes consent given by fax, email or through another electronic medium.
 - 2.6. In the event of inconsistency between the Dutch wording of the GTCs and the translation thereof, the Dutch wording shall always prevail.
- 3. Offers/conclusion**
 - 3.1. All Offers are made without obligation. Any final term stipulated in an Offer shall be binding on the Customer only. The User has the right to withdraw their offers within 2 days of receiving confirmation of acceptance from the Customer.
 - 3.2. Subject to the withdrawal option, within the meaning of Clause 3.1, Agreements shall be concluded as of the date on which the User receives full acceptance of their Offer from the Customer, confirmed in writing by the due date. If the Customer accepts the Offer subject to variations of minor significance, such variations shall not form part of the Agreement and an Agreement shall be concluded in accordance with the Offer.
 - 3.3. The User commencing implementation of an Agreement also constitutes conclusion of the Agreement. In case of consulting services provided by the User, the single action of issuing the advice will constitute conclusion of the corresponding Agreement.
 - 3.4. The User is under no obligation to inquire with the Customer about their intended use of the Goods or the conditions in which the Goods will be used. The use or reuse of the Goods is at the Customer's risk.
- 4. Prices**
 - 4.1. Unless the User has specified a different price in the Offer, the prices from the User's price list as valid on the date of delivery shall apply.
 - 4.2. All prices are exclusive of Dutch VAT (BTW), other taxes and levies, shipping costs, and insurance costs, unless stated otherwise.
 - 4.3. The User reserves the right to pass on to the customer any changes to cost price factors relating to the Agreement, such as the prices of (raw) materials, resources, labor costs, insurance, freight rates, exchange rates, taxes, levies, or other government-imposed measures that occur after conclusion of the Agreement.
- 5. Delivery**
 - 5.1. Unless other methods of delivery are agreed, deliveries shall be deemed to have taken place after the User has segregated the Goods for delivery and prepared them for dispatch at the Depot, and has notified the Customer thereof in writing.
 - 5.2. Following delivery, the Customer shall bear the full risks for the Goods.
 - 5.3. If Goods delivered by the User cannot be transported to their destination due to circumstances for which the User cannot be held responsible, the User shall store the Goods at the Customer's risk and expense.
 - 5.4. The User is free to choose the means of transport for shipment of the Goods.
 - 5.5. The User has the right to make part-deliveries.
 - 5.6. Delivery times stated by the User are not deadlines. In the event of late delivery, the Customer is required to serve the User with notice of default in writing, allowing the User a reasonable period within which to fulfill their delivery commitments, during which neither the Customer nor any third party has the right to claim any compensation from the User. The User cannot be held in default before expiry of the unused reasonable term, including if the default sets in by operation of law without notice of default or written reminder or notification.
- 6. Force majeure**
 - 6.1. In the event that proper compliance by the User is fully or partially permanently impossible due to circumstances that cannot be attributed to the User (including circumstances listed in Clause 6.2), the User will be entitled to terminate the Agreement in full or in part, without being held to any kind of compensation.
 - 6.2. Shortcomings due to circumstances for which the User cannot be held responsible, within the meaning of Clause 6.1, shall in any case include shortcomings due to war, the threat of war, unrest, fire, breakdowns at the User's production facilities, strikes, blockades, lock-outs, transport problems, disruptions in supplies of raw materials/semi-manufactures, lack of employees, the failure of sub-suppliers/contractors to fulfill their commitments, or to do so on time, government-imposed current or future regulations that impede or limit the use of the Goods, import/export/transit bans, natural and/or nuclear disasters, terrorist acts and/or attacks.
 - 6.3. Compliance will be deemed permanently impossible if the performance in question cannot be fulfilled within 60 days after the start of the circumstances that cannot be attributed to the User.
 - 6.4. If the performance can indeed be fulfilled within 60 days, compliance will not be deemed permanently impossible, meaning that neither the User, nor the Customer will be entitled to terminate the Agreement. The User's obligations will be deferred until the circumstances impeding compliance have ceased to exist, without the User being held to pay compensation of damages or lost profit.
- 7. Security**

In the event that the User sees grounds to fear that the Customer will fail to duly comply with their obligations or do so on time, the Customer will be required to, upon the User's first request to that effect, immediately furnish adequate security in the way specified by the User to secure full compliance with all their obligations or to supplement or replace a previously furnished security. If the Customer fails to comply within 7 days after receipt of a request for security, all consequences of non-compliance will commence immediately. All charges in relation to payments, including the furnishing of security, will fall to the Customer.
- 8. Payment**
 - 8.1. Payments must be made without applying any kind of discount or offset within 30 days after the invoice date. If the Customer wishes to deduct outstanding receivables from payable amounts under a right that falls to the Customer by law, they must notify the User thereof in writing within 7 days after the invoice date. Such an offset will only be applied with the User's written consent.
 - 8.2. Payments must be made in the currency invoiced by the User and at the User's office or into the User's bank or giro accounts.
 - 8.3. Payments shall first be applied to the settlement of costs, then to the settlement of interest and thereafter to the settlement of outstanding invoices, in chronological order, even if the Customer states that their payment relates to other invoices and/or debts.
 - 8.4. If the Customer fails to pay on time, the Customer shall be in default, without notification thereof being required, and shall be liable to pay the User 1.5% interest on the invoice amount for each month or part of a month following the payment date for which payment is overdue.
 - 8.5. If the Customer is in default, the User will be entitled to take action to recover the debt. All extrajudicial costs, expressly including costs incurred in drafting and sending demands for payment, settlement negotiations, and other activities in preparation for a possible lawsuit, as well as judicial costs incurred by the User due to the Customer's non-compliance, will fall to the Customer.
 - 8.6. If the Customer defaults on any of their payment obligations, the User's other receivables from the Customer will also be immediately due and payable. In this case, Clauses 8.4 and 8.5 shall apply accordingly.
- 9. Reservation of ownership/non-possessory lien**
 - 9.1. All Goods delivered by the User to the Customer will remain the property of the User until the Customer has satisfied all their (payment) obligations toward the User, including amounts payable due to the Customer's failure in their compliance with these obligations.
 - 9.2. If the Customer applies the Goods delivered by the User, and which are subject to an ownership reservation, for the production of new goods, they will follow the User's instructions in the processing thereof and shall reserve the goods on the User's behalf. The Customer shall become the owner of the Goods only at such time as the ownership reservation lapses through settlement of all of the User's receivables.
 - 9.3. Before the Customer has fully satisfied their (payment) obligations toward the User, the Customer will only be allowed to sell the Goods to third parties as part of its regular business operations as the User's agent in their own name, albeit for the User's account.
 - 9.4. Before the Customer has fully satisfied their (payment) obligations toward the User, the Customer will not be allowed to pledge Goods to third parties or encumber the Goods.
 - 9.5. The Customer shall treat the Goods that come under the reservation of ownership with due care. The Customer will insure the Goods against all disasters, on the basis of the invoice value. The Customer will provide the User with the names and addresses of the insurers and with copies of the policies, at the User's earliest request. In the event of theft, damage to, or loss of the Goods, the Customer's entitlements toward the insurer under the insurance policy will pass to the User.
 - 9.6. In the event of non-compliance by the Customer, the User will be entitled to take back delivered Goods to which the User retains ownership, or to have a third party retrieve the Goods on their behalf. The Customer therefore hereby authorizes the User to access the sites and/or buildings where the Goods are held, or to have a third party access these sites and/or buildings on their behalf. Any expenses incurred by the User in taking back the Goods will fall to the Customer.
- 9.7. The Customer is under an obligation to immediately notify the User in the event that third parties claim rights on Goods delivered by the User which come under the reservation of ownership, or when it comes to their attention that third parties intend to claim rights on the aforementioned Goods.
- 10. Quality and complaints**
 - 10.1. Immediately on delivery, the Customer shall count, measure, weigh, and inspect the Goods for visible defects, and for invisible ones which are easily detected, prior to storage or use. Following receipt of the Goods, these will be deemed to be in line with the Agreement, unless Goods later turn out to have defects that are not easy to detect. The Customer must accept the usual 10% tolerances regarding quantities, dimensions and weights. Complaints concerning quantities, dimensions, weights, visible defects and easily detectable invisible defects must be submitted to the User immediately if the nature of the Goods allows and, in all other cases, in writing to the User within 14 days of the delivery of the Goods. If Goods delivered by the User turn out to have a defect that is not easy to detect, the Customer must lodge a written complaint with the User within 14 days after the Customer should in all reasonableness have detected the defect. The Customer can no longer claim that the Goods delivered by the User are not consistent with the Agreement if the Customer has failed to lodge the complaint on time as specified in Clauses 10.3 and 10.4. If the Goods are not consistent with the Agreement, the User will only be required to either deliver the missing part, repair the Goods, replace the Goods, or refund the invoice amount to the Customer upon return of the Goods, wholly at the User's discretion and on the condition that the Customer has performed a timely and thorough inspection and lodged a complaint as specified in Clauses 10.3, 10.4. Legal claims and statements of defense by the Customer based on facts justifying the claim that the Goods delivered by the User are not consistent with the Agreement will expire 1 year after delivery of the Goods to the Customer. The Customer is required to adhere to the User's instructions regarding the storage or return of Goods that are to be replaced or repaired. The Customer continues to bear the risk of the Goods. Complaints shall in no event entitle the Customer to suspend their (payment) obligations.
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- 11. Limitation of liability/Product liability risk**
 - 11.1. Notwithstanding liability under Netherlands mandatory law, the User will - regardless of the legal grounds on which a claim is based - not be held to pay compensation beyond the invoice amount for the Goods that caused the losses.
 - 11.2. The User will - regardless of the legal grounds on which a claim is based - in particular not be liable for direct losses, consequential losses, trading losses, immaterial damage, losses caused by production and/or business operation disruptions or interruption, damage caused by subordinates, assistants, and/or sub-contractors - even when attributable to malicious intent and/or gross negligence on their part - or for losses caused by the use of aids, suffered by the Customer or third parties.
 - 11.3. The User's recommendations and instructions for use are based on current knowledge and the present state of the art. Customers and users should evaluate Goods delivered by the User by themselves, with regard to the required utilization and other requirements. The User rejects responsibility in case the Goods are not being used subject to the User's recommendations and/or instructions for use.
 - 11.4. The User may use the services of third parties in implementing the Agreement and will at all time be entitled to rely on these third parties' liability limitations toward the Customer.
 - 11.5. The User claims all statutory and contractual rights the User can rely on to shield themselves from liability, partly for those - including both subordinates and non-subordinates - involved in the implementation of the Agreement for whom the User is liable by law.
 - 11.6. If the Customer resells goods supplied by the User, or if the Customer processes such goods in new products which the Customer subsequently sells, the Customer will be required to take out adequate product liability insurance. The Customer undertakes to send the User a copy of the relevant policy at the User's earliest request.
 - 11.7. The Customer indemnifies the User against any third-party claims relating to the Goods, for which the User cannot be held liable pursuant to this article.
- 12. Cancellation**
 - 12.1. In the event that the Customer falls short in their compliance with their obligations toward the User under the Agreement or in the event that the Customer applies for a moratorium or is granted a moratorium or is declared bankrupt, or otherwise loses control of their capital or their control is restricted, ceases operations or relocates to another country, or their business is wound up or dissolved, merges or splits, or a decision to that effect is made, the User will be entitled to terminate the Agreement in full or partially and suspend further compliance with their obligations under the Agreement, without prejudice to any other rights falling to the User and without being held to pay any kind of compensation.
 - 12.2. In the event that the User falls short toward the Customer, the Customer will only be entitled to terminate the Agreement if the shortcoming is material.
- 13. Infringement of third-party rights**

The Customer shall guarantee that goods produced by the User in accordance with instructions or drawings supplied by the Customer, or with the aid of the Customer's molds or forms, shall not infringe on the intellectual property rights of third parties. The Customer indemnifies the User against all claims from third-party rightful claimants in relation to such infringements.
- 14. Special goods**
 - 14.1. Unless explicitly agreed otherwise, the User has the right to produce for third parties any special goods which the User produces for the Customer.
 - 14.2. Samples of special goods must be inspected by the Customer within 14 days of their dispatch by the User. If the User has not received notice of rejection within 14 days, the samples shall be deemed to have been approved.
 - 14.3. Unless explicitly agreed otherwise, all samples, drawings, and all other equipment and instructions relating to the production of special goods are, and shall remain, the property of the User.
 - 14.4. Drawings, knowledge, and designs which the User makes available to the Customer may not be copied, disclosed or revealed to third parties without the User's written consent. They must be returned to the User immediately after use. For each infringement of this Clause, the Customer shall incur a fine of €50,000 payable immediately on demand, plus a further €5,000 for each day that such infringement continues, without prejudice to the User's right to compliance and/or compensation.
- 15. Applicable law**

All Agreements or consequent commitments are subject to Netherlands law and Netherlands international private law, not including the 1980 Vienna Convention on the International Sale of Goods.
- 16. Place of execution**

Execution of the Agreement is deemed to have taken place at the location at which the User is based.
- 17. Disputes**

Any disputes relating to an Agreement and/or consequent commitments shall be brought before the competent court in the district where the User is based.
- 18. Evidence**
 - 18.1. In the absence of comprehensive evidence to the contrary, the User's administrative records will be decisive as regards the financial extent of the reciprocal commitments under Agreements concluded with the User.
 - 18.2. In the absence of comprehensive evidence to the contrary, the quantities, measures, and weights stated in invoices, waybills, and/or packing slips between the Customer and the User shall be deemed to be accurate.
- 19. Amendments**

The User reserves the right to amend these GTCs. Amended stipulations shall take effect as of the date stated in the amendment resolution.
20. These GTCs enter into force on January 1, 2016, and have been filed with the Arnhem Chamber of Commerce.