

GENERAL TERMS AND CONDITIONS

1. Unless agreed otherwise in writing, any offer and any (also future) contract is governed by the present terms and conditions, which form an integral part thereof and which take precedence over the terms and conditions of purchase of the customer. Such terms and conditions of purchase of the customer shall not be deemed accepted by us unless we expressly agree otherwise in writing. Any deviation from or modification of the present terms and conditions can only be relied upon against us provided that we have granted our consent thereto in writing. The present terms and conditions shall apply to contracts for the sale of products (irrespective of whether they are custom made), as well as to contracts regarding any type of repair or servicing work.
2. Unless agreed otherwise in writing, prices, brochures, catalogues or proposals are non-binding and can be changed or amended at any time. A contract shall only be effective after written confirmation of the order by us. In case orders are carried out without our prior written consent as to the price, prices valid at the day of the order shall be applicable.
3. Unless expressly stated otherwise, delivery times mentioned in any written confirmation, contract or other document are indicative only and shall not be binding on us and delays in delivery shall not be a valid cause for termination of the contract. Our liability shall always be limited to the direct and foreseeable damage and shall in no event exceed 2,5% of the contract value. Any modification of the order automatically implies that the indicative delivery times may be prolonged. Delivery may be suspended and indicative delivery times may be prolonged in case of any delay in the payment of advances.
4. All goods and materials remain our property until they have been fully paid for. Until such time and absent our written consent thereto, it is strictly forbidden for the customer to alienate or to pledge the goods, or to let them serve as security or to legally or physically transfer them in any other manner.
5. All goods and materials ordered are always delivered ex factory/warehouse Wevelgem. Such goods and materials are accepted at the place of delivery and the risk in the goods and materials transfers to the customer upon delivery. The risk of transport is carried by the customer, even if it has been agreed that we will take care of, organize or be otherwise involved in the transport. It is the customer's duty to ensure that all necessary precautions have been taken and all conditions have been met to take delivery at such time as is indicated by us. All damage caused because the above has not been complied with, remains solely the responsibility of the customer.
6. If the customer refuses to accept delivery, makes it impossible for us to carry out the delivery or substantially delays the acceptance of delivery, we shall be entitled to terminate the contract by giving written notice to the customer (without there being any need for court intervention or any other formalities) and, as of such written notice, the contract shall be deemed to be rescinded on account of a breach by the customer and compensation shall be due. Without prejudice to our right to prove that the actual damage is higher, such compensation shall be deemed to amount, as a minimum, to a fixed sum of 25% - increased to 75% in the case of made-to-measure goods - of the total purchase price exclusive of VAT. When partial delivery has already taken place before the customer refuses to accept any further deliveries, makes it impossible for us to carry out any further deliveries or substantially delays the acceptance of any further deliveries, we shall be entitled to invoice the customer for the part of the delivery already made and to terminate the part of the contract relating to the deliveries that have not yet been made, by giving written notice to the customer (without there being any need for court intervention or any other formalities). As of such written notice, the relevant part of the contract shall be deemed rescinded on account of a breach by the customer and we shall be entitled to compensation. Without prejudice to our right to prove that the actual damage is higher and to claim damages accordingly, such compensation shall be deemed to amount, as a minimum, to a fixed sum of 25% - increased to 75% in the case of made-to-measure goods - of the total purchase price exclusive of VAT.
7. Unless expressly agreed otherwise, the prices mentioned to the customer shall not include any governmental taxes, levies or other charges that may become due on account of the sale or purchase of the goods and materials. The customer shall be exclusively liable to pay such taxes, levies or charges and, if they are charged to us or need to be paid by us as a matter of law, the customer shall reimburse the same to us without delay.
8. All invoices must be paid into the bank account number as indicated on our invoices or such other bank account as we may designate in writing from time to time. Payment must be made in full and without any reduction or deduction and the relevant amount must be available on our bank account on the due date indicated on the invoice. In case of delayed payment, a legal and conventional interest of 1% per month or part of a month shall apply automatically as from the due date without any notice of default being necessary. The interest due by the customer shall be capitalized per annum, subject to notice of default thereto by registered mail. If payment by instalments has been agreed to by us and if one of the instalments is not paid or not paid in time, the remainder shall become legally due increased with any interest and any conventional compensation pursuant to points 9, 11 and/or 12 hereafter and any such other compensation as the parties may have agreed to.
9. If any outstanding amount is not paid on its due date and we issue a notice of default by registered mail, any such amount due shall, as of the date of such registered letter, be automatically increased by 12%, with a minimum of € 125 as a fixed conventional compensation for extra-legal costs. This compensation is subject to the same legal and conventional interest of 1% per month or part of a month as from the notice of default by registered mail.
10. The unconditional payment of all or part of the invoiced amount shall be deemed to be acceptance of our invoice. Partial payments shall always be accepted under reservation of, and without prejudice to our rights, and shall be deemed to cover the debts of the customer in the following order of priority: any legal costs incurred, secondly interest due, thirdly any fixed compensation (as in point 9 hereof or as otherwise expressly agreed) and finally the principal amount. **The customer will not have the right, should a dispute arise that concerns only part of an invoice, to reject payment for goods and materials already received.**
11. In case of non-payment on the due date and if the customer has failed to remedy the payment issue after notice of default by registered mail, the customer shall be deemed to have committed a serious breach of contract and we can, at all times, opt to terminate the contract on account of such breach. Such termination shall require a notification by registered mail. In such case the customer shall allow us to retrieve the goods and materials from where they are kept, and the customer shall be bound to pay compensation amounting, as a minimum, to a fixed sum of 25% - increased to 75% in case of made-to-measure goods - of the total purchase price exclusive of VAT. The foregoing shall not prevent us from proving damage in excess of such amount and to claim damages accordingly.
12. In case of non-payment on the due date we shall also be entitled to cancel any outstanding orders or to suspend their execution, of which we will inform the customer by registered mail. In case of cancellation, the customer shall be bound to pay compensation amounting to a minimum fixed sum of 25% - increased to 75% in case of made-to-measure goods - of the total purchase price exclusive of VAT. The foregoing shall not prevent us from proving damage in excess of such amount and to claim damages accordingly.
13. In any case of non-payment on the due date, all outstanding amounts of the customer (irrespective of whether they are due at the time) shall automatically become due. No notice of default shall be required to that effect. Furthermore, we shall be entitled to retain any of the customer's goods that are still in our possession until such time as payment in full has been made.
14. If objective elements (such as, without limitation, protested bills of exchange, cancellation of credit, attachment or seizure or outstanding debts) indicate that the customer is facing liquidity problems, we have the right to make the fulfilment of our obligations subject to the receipt of sufficient guarantees.
15. We undertake to deliver goods and materials to the customer which are in conformity with the contract of sale. **Any images used in the offer shall serve solely as an illustrated indication of the primary characteristics of the relevant product. Deviations concerning the product in comparison to the images (e.g. in color) will not be construed as an adequate reason to declare the agreement null and void or demand its rescission.** There shall be no lack of conformity unless the qualities and characteristics involved have been expressly and specifically guaranteed by us in writing at the time when the contract with the customer was concluded.
16. At the time of delivery the customer shall conduct a visual inspection of the goods, materials and packaging delivered by us. Any shortages or apparent damages shall be detailed on the consignment note. The customer shall further without delay and at the latest within three (3) days of delivery send a copy of such consignment note and provide at the same time detailed information in writing concerning shortages and/or apparent damages to Boplan including evidence of such defects. The customer shall make available all defective products (and the original labelled packaging) or deficient packaging for inspection immediately upon request by Boplan. Further, on Boplan's request the customer shall return all such products (and the original labelled packaging) or deficient packaging to Boplan or Boplan's appointed service partner. We shall not be liable for any visible lack of conformity if the customer has failed to comply in any manner with this provision or with the Boplan return procedure and/or guidelines known by the customer.
- 17.1 The burden of proof regarding the hidden defects shall be on the customer. If there is any hidden defect in the goods and materials delivered by us, the customer shall be required to inform us in writing (by registered mail) within 1 month following the date on which the customer becomes aware of such defect. Such written communication must set out in reasonable detail the nature of the hidden defect and include evidence of such defect. The customer shall make available all defective products for inspection upon request by Boplan. Further, on Boplan's request the customer shall return all such products to Boplan or Boplan's appointed service partner. We shall not be liable for any hidden defect if the customer has failed to comply in any manner with this provision or with the Boplan return procedure and/or guidelines known by the customer.
- 17.2 We shall only be held liable where the hidden defect becomes apparent within two years as from delivery of the goods. All the customer's claims shall become invalid six months after the notification of the hidden defect according to article 17.1. All claims to guarantee for lack of conformity expire in the event of damage caused during processing, assembly or maintenance, changes and/or repairs made by the customer or a third party. A claim to guarantee also expires if the delivered goods are not assembled or processed, used or installed according to our instructions and/or the instructions of the manufacturer that accompanied the delivery and of which the customer declares having received a copy. The same applies when the goods have not been submitted to an annual check-up or have not been maintained according to our maintenance instructions and/or the instructions of the manufacturer that accompanied the delivery and of which the customer declares having received a copy. There shall be deemed not to be a hidden defect for the purposes of this article if, at the time the contract was concluded, the customer was aware, or could not reasonably be unaware of it.
18. In case of a visual lack of conformity or hidden defect that has been notified to us in accordance with points 16 and 17 above, the customer is only entitled to require us to repair the goods or to replace them, at our sole discretion, in either case free of charge. Apart from the costs strictly related to conducting such repair or replacement, we shall not be liable for any other costs, transport costs, installation costs, expenditures, damages or any other financial obligation that is in any manner related to the defect in the goods and materials or any possible consequence thereof. Any other liability that is imposed by mandatory law shall, to the extent permitted by such mandatory law, be limited to the amount covered by our insurance. Only if we have not completed the remedy within a reasonable time, the customer may require an appropriate reduction of the price. The customer is never entitled to have the contract rescinded. The customer shall protect us against all claims made by third parties with regard to the delivered goods, as a result of which our maximum obligations would be exceeded. The customer shall inform Boplan of all complaints received concerning the products. If Boplan so requires, the customer undertakes to carefully follow up all complaints with the purpose of avoiding damage and questioning of the goodwill pertaining to Boplan and the products.
19. Absent our written and specific consent, the amounts owed by the customer to us cannot in any way be offset against any amount the customer may claim we owe him. Neither can the customer invoke such claims to justify the suspension or postponement of his payment obligations towards us.
20. In case of "foreign cause" (art. 1147 of Belgian Civil Code), even when this does not lead to a permanent and/or complete impossibility to carry out the contract, we have the right, by law, to postpone or to annul our commitments unilaterally, after giving prior notice thereof to the customer. Such postponement or annulment shall not entitle the customer to any indemnification. Conventional "foreign causes" include, without limitation: war, a strike or lock-out, extreme shortage of raw materials or goods, weather conditions, fire, natural and/or other disasters, governmental decisions which influence the execution of agreements. This provision shall apply irrespective of whether these "foreign causes" apply to us or to our suppliers.
21. As a result of placing an order with us, the customer irrevocably accepts with regard to such order and the contract following such order to be bound by the general terms and conditions that are available on our website on the date that the order is placed. If any clause of the present terms and conditions is found to be invalid for any reason, the remainder of these terms and conditions shall not be affected and shall remain in full force and effect.
22. Unless we opt to bring a claim against the customer before the courts of the judicial district in which the customer has its registered office, any dispute between us and the customer shall be within the exclusive jurisdiction of the Courts of the judicial district of West Flanders. This jurisdiction clause applies to all types of proceedings, including summary proceedings or proceedings to secure interim or conservatory measures. The present terms and conditions are governed by Belgian law. The applicability of the Vienna Convention on the International Sale of Goods and of articles 1641 up to 1649 inclusive of the Belgian Civil Code is hereby explicitly excluded. All other matters that have not been expressly specified shall be governed by Belgian common Law.