



## GENERAL TERMS AND CONDITIONS OF SALE B+M BAUSTOFF + METALL NEDERLAND B.V.



### Definitions

1. B+M Baustoff+Metall B.V. and all persons, legal entities, and/or companies affiliated with it, as well as its legal successors under general title, now and in the future, to be jointly referred to hereafter as: "we" and "us"
2. "Goods" shall be understood to mean: all goods delivered to the buyer pursuant to these general terms and conditions.
3. "Written" will mean: by post or by e-mail.
4. The term "delivery time" shall be understood to mean: the periods of time stipulated in the agreements within which we endeavour to deliver the goods purchased by the buyer.

### Applicability

5. These general terms and conditions of sale have been filed with the Chamber of Commerce in Tilburg under number 17269496 and apply to all our quotes, agreements, as well as all legal acts, deliveries, and work performed by us, including legal relationships to be entered into, with us in the future. Unless expressly agreed otherwise, buyers are deemed to agree to our terms and conditions of sale. Deviations from and additions to these terms and conditions of sale are only valid insofar as we have expressly accepted them in writing.
6. If the buyer applies general (purchase) conditions on their part, these will not bind us, unless this has been expressly accepted by us in writing, and then only insofar as they do not conflict with our terms and conditions of sale, in which case our general terms and conditions of sale will prevail.
7. If it becomes clear that one or more of the provisions in these general terms and conditions is contrary to the law, the other provisions in these general terms and conditions will remain in full force.

### Quotes and agreements

8. Contracts are only valid once confirmed by us in writing.
9. If acceptance by the buyer deviates from the offer, this shall be deemed to be a new offer by the buyer and a rejection of our entire offer, even if there is only a deviation on minor points. All of our quotes are without obligation; the buyer cannot derive any rights from a quote.

### Contract variations

10. In the event of delivery of bespoke items, we reserve the right to contract variations amounting to approx. 10%; the buyer is always obliged to accept and pay for these contract variations in full. It is also emphasised that quotes for bespoke items are always without obligation and only relate to the quantity requested. The price must be adjusted accordingly.

### Prices

11. Our prices are net prices stated in euros, and do not include VAT and other government fees and/or third-party fees relating to the sale and/or delivery and/or execution of the agreement unless is explicitly agreed upon otherwise in writing.
12. Shipping, packaging, and transport costs will be passed on to the buyer unless explicitly agreed upon otherwise in writing.
13. If, after a quote has been provided but before delivery has been made, one or more cost factors undergo an increase (explicitly including a change in the exchange rate of foreign currency), we are entitled to pass on this increase and/or change in the exchange rate to the buyer. We therefore reserve the right to charge the buyer a proportional price increase if, after the conclusion of the agreement, an increase occurs in one or more price-determining factors and/or statutory levies, including labour costs, premiums, materials, and exchange rate fluctuations.
14. The provisions of Article 13 shall also apply if the changes in price-determining factors referred to therein are the result of circumstances that could have been foreseen when the agreement was entered into.
15. If application of Article 13 should lead to a price increase of 10% or more, and the price increase is not the result of legislation, the buyer has the right to dissolve the agreement by registered letter, within one week after we have notified them of an increase in the agreed price.

### Delivery

16. Stated delivery periods can never be considered as final deadlines. The buyer cannot derive any rights from these deadlines being exceeded. In particular, if the target delivery date is exceeded, the buyer cannot claim dissolution of the agreement and/or compensation, unless the contrary is expressly stated by law. If the buyer is of the opinion that exceeding the target deadline stated by us is unreasonably onerous for him/her, the buyer shall be obliged to provide us with a reasonable delivery period by registered letter or bailiff's notification, which cannot (again) be regarded as a deadline. A reasonable period is in any case the period that is standard in the industry. After receipt of the above-mentioned notification, we will enter into consultation with the buyer regarding the exceeding of the target deadline. Incidentally, as far as the delivery period is concerned, the goods are deemed to have been delivered as soon as we have them ready for collection or delivery.
17. The delivery period commences after the agreement has been entered into, all information necessary for the fulfilment of our obligations has been made available to us, and all permits/formalities (including the buyer's VAT number) necessary for this fulfilment have been obtained, provided, or communicated by the buyer. The delivery period will be extended by the period during which we have suspended our work pursuant to these terms and conditions and/or the law, or during which we have been prevented from working due to force majeure as described in Article 48.
18. Immediately after the items have been delivered or are deemed to have been delivered as described in Article 17, the buyer shall bear the risk for all direct and indirect damage caused to or by the items delivered. The goods shall be transported at the buyer's risk.
19. All shipments will be delivered in the manner to be determined by B+M Baustoff+Metall B.V. Exceptions will only be made in exceptional cases when this has been agreed upon in writing.
20. Bespoke items ordered by the buyer that have been delivered will not be taken back. Returns of the aforementioned goods must always be made postage paid to an address to be indicated by us and will be refused if we have not been informed in advance, in writing, by the buyer of his or her intention to return certain goods delivered by us and this return has been approved by us in writing.
21. Free delivery shall only take place in consultation.

### Complaints

22. The buyer is obliged to check the delivered goods upon receipt. Any defects in the goods delivered, which can be observed immediately upon receipt of the goods, must be reported to us in writing by the buyer immediately and at the latest within 48 hours after delivery, specified with a clear description of the complaint. We will only handle complaints as referred to in this article within 48 hours after receipt of the goods by the buyer. Minor deviations or differences in quality, number, size or finish that are standard in the industry cannot constitute grounds for complaints.
23. The buyer must submit other complaints to us in writing no later than two working days after receipt of the goods or after any defects could reasonably have been detected. No further complaints may be made regarding defects discovered after one year following delivery.
24. Complaints about invoices must be submitted to us in writing within 8 days after the invoice date, in default of which the information applicable to those invoices between the parties will be deemed to be correct.
25. Complaints with respect to defects will not be honoured if the goods have been processed, or if these defects have not been reported within the aforementioned periods.
26. In the absence of a timely complaint, the goods are deemed to have been approved and our liability for the goods shall lapse.

27. We must be given the opportunity to inspect the goods after a complaint, for which the buyer must cooperate fully. Complaints will not be accepted for goods that we do not have the opportunity to inspect.
28. 28. If we acknowledge a complaint, we shall be entitled, at our discretion:
1. to redeliver the delivered goods;
  2. to credit the buyer for the delivery in question, or a portion thereof;
  3. to terminate the agreement in consultation with the buyer.
29. If we wish to terminate the agreement in consultation with the buyer, see Article 28, the buyer shall owe a cancellation fee equal to 10% of the purchase price stated in the agreement, plus any costs we have already incurred.

#### **Retention of title**

30. All goods delivered by us shall remain our property until full payment of all our claims against the buyer, pursuant to agreements for the delivery of goods and associated work, as well as claims for failure to fulfil such agreements by the buyer, including interest and costs.
31. As long as ownership of the delivered goods has not passed to the buyer, the buyer may not (i) pledge the goods, (ii) grant a third party any other right to them or (iii) transfer ownership of the goods.
32. The buyer is obliged to store the goods delivered under retention of title with due care and as recognisable as our property.
33. If the buyer fails to fulfill their payment obligations towards us or if we have good reason to believe that they will fail to fulfill their obligations, we shall be entitled to take back the goods delivered by us subject to retention of title. The buyer hereby grants us unconditional and irrevocable permission to enter all places where our property is located and to repossess said property.
34. If third parties seize goods delivered subject to retention of title or wish to establish or assert rights to them, the buyer is obliged to inform us of this in writing as soon as can be reasonably expected.

#### **Liability**

35. Except in cases of deliberate intent or gross negligence on our part, we will not be liable for any damage, however named or on whatever grounds.
36. In the event that, despite the provisions of Article 35, we are nevertheless deemed liable, we will only be liable for indirect damage, including but not limited to trading loss, consequential damage, loss of profit, missed savings, and/or business interruption loss, and not for damage which could reasonably have been prevented and/or limited by the buyer. Furthermore, liability is subject to the condition that the buyer notifies us in writing immediately after discovery of the breach and gives us a reasonable period of time to remedy the breach.
37. Any liability, whether contractual or non-contractual, on our part as well as on the part of our employees, directors, auxiliaries, and subordinates, shall be limited to the amount paid out in the relevant case under the cover of the insurance to be taken out by us. If and insofar as, for whatever reason, no payment is made under the aforementioned insurance, or if no insurance has been taken out, any liability is limited to the amount of the invoice value of the item sold to the seller through which or in connection with which damage has been caused, whereby a series of identical and/or interconnected events causing damage are to be regarded as a single event. For processed goods - in the broadest sense of the word, goods that have been adapted, altered, applied, etc. - no liability whatsoever is accepted.
38. Without prejudice to the provisions of Article 6:89 of the Dutch Civil Code, the right to compensation lapses in any event 12 months after the event or omission from which the damage directly or indirectly results and for which the Contractor is liable, but in any event after five years from the date of the last invoice.
39. If the buyer holds us liable for any damage, however named or on whatever grounds, they shall be obliged to inform us of their own accord and immediately after the damage has occurred regarding the nature, extent, and cause of the damage, and to prove to us of their own accord that they have handled the delivered goods responsibly.
40. In the event that the buyer transfers goods or makes them available to another person after we have informed them that we have doubts as to their quality, whether or not for compensation and whether or not to be used, or in any other way, under any title whatsoever, the buyer is obliged to indemnify us against all claims by third parties for damage caused by or in connection with the goods which we have delivered to the buyer.
41. Illustrations and descriptions in our brochures are always non-binding and the buyer cannot derive any rights from them. Information mentioned in the catalogues, technical drawings, recommendations, and other additional information we have provided are not binding for us.
42. We shall never be liable for damage caused by work on the goods delivered which does not form part of our normal activities and which we have carried out as a service at the buyer's request.
43. In the event that we deliver goods that we have purchased from third parties, we shall only provide a guarantee for these goods if and insofar as we receive a guarantee for them from our supplier. In that case, the guarantee shall be homogenous.

#### **Payments**

44. Payment for goods delivered by us must be made within 30 days of the invoice date, unless another arrangement has expressly been made in writing. Settlement and/or suspension by the buyer are not permitted, unless we have accepted the counterclaim in full and unconditionally.
45. Payment must be made in euros, unless otherwise indicated by us in writing.
46. As a result of simply exceeding of the stipulated term of payment, the buyer shall owe interest at a rate of 2% per month, calculated as a whole month, on the outstanding amount from the day that the term was exceeded. All costs incurred by us as a result of judicial and/or extrajudicial claims collection are to be borne the buyer. The extrajudicial collection costs will never be less than 15% of the amount owed by the buyer for the goods delivered to the buyer. The buyer may not withhold or suspend payment by invoking a counterclaim against us or alleging negligence on our part. Of course, the buyer, who is in default of payment of the invoice, cannot claim delivery of a current order.
47. Payments made by the buyer will first serve to settle all costs and interest owed (in this order), then of due and payable invoice claims in respect of which no valid retention of title can be stipulated, and subsequently of due and payable invoice claims that have been outstanding the longest, even if the buyer states that the payment relates to another or later (invoice) claim.
48. In the event of liquidation, insolvency, bankruptcy, or suspension of payment on the buyer's side, the claims, for whatever reason, shall be immediately due and payable.
49. We shall at all times be entitled to demand advance payment of the amount owed by the buyer.

#### **Force majeure**

50. A breach in the fulfilment of an obligation on our part shall in any case not be regarded as attributable and shall not be at our risk in the event of default and/or breach by or at one of our suppliers, subcontractors and/or carriers, fire, strikes or lockouts, riots or insurrection, war, government measures, including export, import, or transit bans, frost, and all other circumstances of such a nature that binding force can no longer be imposed upon us.
51. In the event of a breach as referred to in the aforementioned article, this shall serve as justification for dissolution or suspension, at our sole discretion. In that case, the buyer is not entitled to compensation for any damage, costs, and/or interest.
52. If we have already partially fulfilled our obligations when the situation of force majeure arises, or can only partially fulfil our obligations, we shall be entitled to invoice the part already delivered or deliverable separately and the buyer shall be obliged to pay this invoice.

#### **Indemnification**

53. We shall never be liable vis-à-vis third parties for any damage resulting from the execution of the agreement to which these terms and conditions apply to a greater extent than we would be liable vis-à-vis the buyer.
54. The buyer indemnifies us against any further liability and shall stipulate a corresponding indemnification for our benefit in its agreements with third parties where possible.
55. The buyer fully indemnifies us against claims for damages from third parties, based on infringement of intellectual property rights, through the use of drawings, data, materials, or parts, or caused by the application of working methods that have been provided or prescribed to us by or on behalf of the buyer for the execution of the agreement.

#### **Applicable law**

56. All agreements subject to these terms and conditions are governed by Dutch law. All disputes and claims that may arise as a result of an agreement to which these terms and conditions apply in whole or in part shall be settled by the District Court of East Brabant or by the competent court where the buyer is domiciled, at our discretion.
57. The provisions of the Vienna Convention on Contracts for the International Sale of Goods shall not apply, nor shall any future international regulation on the sale of movable property, the operation of which may be excluded by the parties.