

# GENERAL TERMS AND CONDITIONS OF SALES, DELIVERY AND PAYMENT OF BOAL B.V.

**Applicable as of July 1st, 2017**

- A. Definitions**  
In these General Terms and Conditions of Sales, Delivery and Payment the following definitions apply:  
"Terms and Conditions": these General Terms and Conditions of Sales, Delivery and Payment.  
"BOAL": BOAL B.V., having its registered office in De Lier, the Netherlands;  
"Incoterms": the delivery terms 2010 drawn up by the International Chamber of Commerce in Paris;  
"the Purchaser": the (intended) contracting party and purchaser of the goods from BOAL;  
"Quotation": the by BOAL proposed (non-binding) quotation to the Purchaser;  
"Order Confirmation": the confirmation made by BOAL concerning the order of the Purchaser;  
"Agreement": the agreement concluded between BOAL and the Purchaser pertaining to the Order Confirmation together with these Terms and Conditions which as a whole shall prevail over any (contradictory) terms and conditions of the Purchaser.
- B. Validity**  
1. These Terms and Conditions are applicable to all and any Quotations, Order Confirmations, Agreements concluded and yet to be concluded, deliveries to the Purchaser and/or other performances and/or legal acts with respect to the sale and/or delivery of goods by BOAL.  
2. The Purchaser herewith waives any claim on other terms and conditions. Any deviations from these Terms and Conditions or from terms and conditions of the Purchaser shall be applicable only if and insofar as accepted in writing by BOAL.  
3. If in the Agreement reference is made to an Incoterm, the Incoterms shall be applicable for the interpretation thereof.  
4. The nullity of any provision of these Terms and Conditions shall not affect the validity of the other provisions of these Terms and Conditions.
- C. Quotations / conclusion of the Agreement**  
1. Unless explicitly stated otherwise, all Quotations and/or estimates are non-binding and based on the data, drawings and similar documents enclosed with the application, if any, and furthermore on execution under normal circumstances and during regular working hours.  
2. Quotations and Order Confirmations shall not be binding and Agreements shall not enter into force until confirmed in writing or signed by BOAL. Equally, any changes or supplements to an already concluded Agreement shall not be binding unless confirmed in writing by BOAL.  
3. Arrangements with or commitments or notifications by staff of BOAL shall not be binding until confirmed in writing for and on behalf of BOAL by authorized persons and/or explicitly included in the Order Confirmation.  
4. Any data submitted by BOAL with the Quotation or separately in the form of brochures, assembly guidelines, or directions for use, drawings or shipping documentation have an informative character only, and do not form part of the Agreement unless explicitly agreed in writing.
- D. Price and payment**  
1. All prices stated and agreed by BOAL are based on delivery DAP (delivered at place) in accordance with Incoterms, and are exclusive of any payable turnover tax, customs clearance costs, import duties and packaging, unless a different delivery method has been agreed in writing, in which case the prices shall be based on such other delivery method.  
2. Any and all changes in cost-price factors, including but not limited to wages, prices of components or materials, social security contributions, cost of freight, currency fluctuations and/or taxes referring to the agreed performance and occurring after issuing an Order Confirmation and/or after concluding an Agreement, shall entitle BOAL to pass these on to the Purchaser, unless agreed otherwise in writing.  
3. All invoices of BOAL are payable by the Purchaser within 30 days of the date of invoice and in the manner set forth in the invoice, unless otherwise agreed in writing. This constitutes a final date. The Purchaser is not entitled to any set-off. Any existing complaint of or submitted by the Purchaser in connection with the Agreement and/or other Agreements between BOAL and the Purchaser shall not entitle the Purchaser to suspend its payment. Payment must be effected in the agreed currency.  
4. In the event of late payment by the Purchaser of an invoice, all payment obligations of the Purchaser shall become immediately payable, regardless of whether BOAL has already sent an invoice for this.  
5. If the Purchaser fails to make any payment to BOAL - which is the case by the mere expiry of the payment period - the Purchaser shall be deemed to be in default by operation of law, without requiring any notice of default. In that case BOAL shall be entitled to suspend all deliveries, regardless of the Agreement with the Purchaser causing this, and to dissolve the Agreements concerned without requiring any judicial intervention, this without prejudice to the right of BOAL to immediately recall the goods that are still its property pursuant to article K.  
6. In case of late payment of an invoice and without prejudice to the entitlement of BOAL to compensation of all its suffered damage, the Purchaser shall owe an interest on the invoiced amount calculated from the due date, amounting to the Euribor (Euro Interbank Offered Rate) increased by 3%, with a minimum of the statutory commercial interest per annum. If, in connection with late payment by the Purchaser, BOAL is held to take (extra-) judicial measures, all resulting costs shall be borne by the Purchaser.  
7. Regardless of the preceding provisions, BOAL is at all times entitled to demand cash payment for production or delivery of the goods, or, before proceeding to delivery or further execution of the Agreement, to demand the Purchaser to furnish adequate security for fulfillment of the obligations. If the Purchaser is unable to furnish such security in the reasonable opinion of BOAL, BOAL shall be entitled to terminate the Agreement through a written notice to the Purchaser, without entitling the Purchaser to damage compensation.
- E. Delivery**  
1. The agreed delivery deadline, as laid down in the Order Confirmation, applies to delivery DAP (delivered at place) in accordance with Incoterms, unless agreed otherwise in writing. BOAL shall determine the manner of transport and the insurance during transport, which shall both be passed on to the Purchaser, except where taken into account in the agreed price.  
2. The agreed delivery deadline serves as an indication and not as a final date. In case of late delivery the Purchaser shall be held to put BOAL into default in writing. The Purchaser herewith declares that it is not entitled to any damage compensation or dissolution of the Agreement when overstepping a delivery deadline. This is different only if the Purchaser can prove that BOAL can be blamed for willful misconduct or gross negligence or if other arrangements have been laid down in the Order Confirmation, in which case the Purchaser shall not be entitled to postpone or offset its payment.  
3. BOAL is entitled to perform the delivery in partial deliveries.  
4. Upon delivery of the goods by BOAL to the Purchaser, the risk for damage or loss of the goods shall pass to the Purchaser, even in case of a reservation of title or a complaint pursuant to article H.  
5. The applicability of Section 7:10 (3) Dutch Civil Code is explicitly precluded.  
6. BOAL reserves the right to make changes to delivery terms and means of transport to be engaged, in order to fulfill its obligations.  
7. If, due to the circumstances stated in J, BOAL cannot carry out the Agreement, BOAL shall be entitled to dissolve the Agreement.
- F. Purchase**  
1. If the Purchaser refuses to purchase the goods, BOAL shall be entitled, without prejudice to its authority to claim performance after all and/or full damage compensation, to proceed to dissolution of the Agreement and re-processing of the goods.  
2. In the event of cancellation of the delivery the Purchaser shall be held to compensate the full damage of BOAL and the Purchaser shall indemnify BOAL for the costs to be incurred in connection with the cancellation.
- G. Quality and quantity**  
1. Unless agreed otherwise in writing, all deliveries shall be normal trading quality.  
2. If a special quality control, a control by classification or a control by an inspection agency has been agreed, the extra costs involved shall be borne by the Purchaser.  
3. Margins of ten percent (10%) more or less than the ordered quantity, with a minimum margin of one hundred kilograms (100 kg) per unit, profile type or model shall not qualify as shortcomings. If it refers to an order of less than one thousand kilograms (1000 kg) per unit, profile type or model, margins of twenty percent (20%) more or less than the ordered quantity shall not qualify as shortcomings. BOAL reserves the right to refuse orders of less than five hundred kilograms (500 kg) per unit, profile type or model.
- H. Complaints and warranty**  
1. The Purchaser has the obligation to inspect the delivered goods upon delivery.  
2. All and any complaints shall be made in writing, with specification, and as soon as possible, but at the latest within 7 days after delivery or - in case of latent defects - within 7 days after the defect has been discovered or reasonably should have been discovered, but at the latest one month after delivery. If the complaint is not made in accordance with the above, BOAL reserves the right to ignore the complaint.  
3. The Purchaser is held to keep the defective goods available to BOAL at its own risk. The Purchaser can no longer claim non-conformity if it has not enabled BOAL to investigate the defect or complaint within the meaning of paragraph 2 of this article within 10 business days of its notification. The goods concerned shall be stored by the Purchaser with due care and in a clearly identifiable way.  
4. All and any claims and defences, based on facts that would justify the assertion that the delivered goods are not in conformity to the Agreement, shall become time-barred through lapse of one year after delivery.  
5. If the delivered goods are not in accordance with the Agreement, BOAL shall, at its discretion, only be held to delivery, repair or replacement of the delivered goods or to reimburse the purchase price in exchange of recall of the goods. Under no circumstances shall BOAL be held to pay more and/or any other damage compensation than stated in this article.  
6. The right of the Purchaser to rely on a defect in the goods shall lapse if the goods were exposed to abnormal circumstances or were not treated in accordance with instructions for use or were otherwise treated without due care and/or expertise.  
7. BOAL shall not give any warranty for its delivered goods unless explicitly agreed otherwise in writing.  
8. If warranty has been agreed, BOAL warrants that no defects shall occur in the delivered goods during a period of three (3) months after delivery, which are directly or predominantly caused by improper material and/or substandard construction or treatment. Such defects must be notified in writing to BOAL on pain of expiry of the entitlement to warranty within 7 days after discovery.
- I. Liability**  
1. BOAL is not liable for any damage of the Purchaser or a third party caused by a failure to perform the Agreement or by a wrongful act (tort) or any other obligation of BOAL towards the Purchaser.  
2. If, on whatever ground, BOAL cannot rely on the limitation stated in paragraph 1, the total liability of BOAL shall never exceed the nominal invoiced amount for the relevant goods and/or delivered services for which damage compensation is claimed. Compensation of damage is explicitly limited to direct damage.  
3. BOAL shall never accept liability towards the Purchaser and/or third parties for whatever costs, loss of use, loss of production, loss of a contract and/or potential contract, loss of income and/or profit, loss of goodwill and/or any other direct and/or indirect damage. BOAL shall never accept liability either towards the Purchaser and/or third parties for consequential damage and/or indirect damage suffered by the Purchaser and/or third parties whether or not in connection with the Agreement and/or the delivered performance, including but not limited to indirect damage caused by delayed delivery and/or defects in the goods.  
4. The limitations of liability stated under I 1 through 3 are terms of the Agreement and are applicable at all times, unless the Purchaser proves that such damage was caused by willful misconduct or deliberate recklessness on the part of BOAL or managers and/or subsidiaries of BOAL.  
5. BOAL cannot be held liable for manifest inaccuracies in the specifications of goods based on submitted images, dimensions, weights, quality, price or other similar data.  
6. The Purchaser shall at all times indemnify BOAL for and against any claims by third parties for compensation of damage arising from and/or related to the Agreement carried out by BOAL and is held to compensate BOAL for all for which it may be ordered due to such claims.  
7. If and insofar as the Agreement also refers to goods obtained by BOAL from third parties, the responsibility and/or liability of BOAL in connection with such goods shall be limited to the liability of such relevant third party towards BOAL if being understood that such liability shall not exceed the limitation stated in 1. It is at the exclusive discretion of BOAL whether or not it shall rely on this clause.  
8. The Purchaser herewith waives the right to declare the Agreement null and void pursuant to Section 6:228 Dutch Civil Code (legal error) and/or to amend it pursuant to Section 6:230 Dutch Civil Code.
- J. Force majeure**  
1. If due to force majeure BOAL is unable to fulfill its obligations under the Agreement, it shall not be liable for the consequences thereof. In case of force majeure, the delivery deadline shall be postponed by the duration of the force majeure situation. If delivery is impossible or if the period of delivery becomes unreasonably long due to the force majeure, BOAL shall be entitled to terminate the Agreement with immediate effect.  
2. Except for the legal provisions concerning force majeure, force majeure on the part of BOAL shall also include: late, delayed and/or improper supply of the Purchaser by suppliers and/or third parties, unsuitability of goods used by BOAL for the performance of the commitment, force majeure on the part of third parties engaged by BOAL for the performance of the commitment, strike (both organized strike and walkout) or another labour conflict, insufficient production capacity due to illness, bans on import, export and transhipment other import or export barriers, logistics barriers, unforeseen component scarcity and energy shortage, as well as all and any other causes beyond the reasonable control of BOAL.
- K. Reservation of title and pledge**  
1. BOAL reserves the title of all its delivered or deliverable goods until the following has been fully paid to BOAL:  
a. by the virtue of the Agreement and/or any other agreements concluded and yet to be concluded, delivered or deliverable goods as well as delivered or deliverable work by virtue of the aforementioned agreements and/or other (financial) obligations arising from the aforementioned agreements.  
b. claims due to the Purchaser's failure to perform the agreement(s) referred to in subsection (a), including but not limited to penalties, interest, reimbursement of expenses and decrease in value of the goods delivered under reservation of title, it being understood that the value determined by BOAL shall be leading.  
2. Until the title of the goods has passed to the Purchaser, the Purchaser shall not be entitled to encumber the goods concerned or to make the goods part or permanently combine the goods with another immovable and/or movable property or to create a new property therewith.  
3. Until the title of the goods has passed to the Purchaser, the Purchaser is held to keep (i) the goods concerned separated from other goods, (ii) to label - and to continue labelling - the goods concerned as property of BOAL in a clearly visible way, (iii) to treat such goods with due care, and (iv) to (continue to) insure such goods properly.  
4. The Purchaser is permitted to use, process, sell and transfer the goods that are subject to retention of title in the normal business operations of its business. If the Purchaser fails to perform its obligations under this article, BOAL shall be entitled to withdraw the aforementioned consent.  
5. If the Purchaser fails to fully perform its obligations under paragraphs 1 through 4 of this article or if BOAL has valid grounds to fear that the Purchaser shall not fulfill such obligations, BOAL shall be entitled, without requiring any notice of default, to reclaim the delivered goods immediately, regardless of the location of such goods.  
6. The Purchaser authorizes BOAL, today for the future, to enter rooms used at or for the Purchaser for reclaiming the goods, and shall render its full assistance to BOAL and/or the third party engaged by BOAL. All costs involved in reclaiming the goods shall be borne by the Purchaser.  
7. The Purchaser is not permitted to rely on a reservation of title concerning any storage costs and/or to compensate such costs or offset these against performances payable by the Purchaser.  
8. BOAL reserves the right to pledge the goods delivered under reservation of title if and as soon as the Purchaser has become the owner of the goods and the Purchaser has accepted the aforementioned pledge. The pledge shall then serve as increased security of all claims of BOAL on the Purchaser. Upon first request of BOAL the Purchaser shall render its assistance to establishing the pledge.
- L. Dissolution**  
1. BOAL is entitled to dissolve the Agreement in whole or in part if the Purchaser applies for administrative receivership and/or is placed under an administration order, is declared bankrupt, discontinues, terminates or sells its business, loses control over its company, if its company is dissolved, is placed under legal restraint or administration or if its movable and/or immovable property is attached. In all of such cases the obligations of the Purchaser shall become immediately payable without creating any obligations to reverse on the part of BOAL.
- M. Transfer of rights and obligations**  
1. BOAL is entitled to transfer all of its rights and obligations arising from the Agreement to any group company of the group of which BOAL forms part. The Purchaser shall give its consent today for the future.
- N. Drawings, Models and Dies**  
1. All drawings, models, dies and tools created by BOAL shall remain the property of BOAL, even though the Purchaser has contributed to the development costs thereof. The Purchaser is bound by a non-disclosure obligation towards third parties concerning all data, information and knowledge submitted by BOAL. The Purchaser is held to impose such non-disclosure obligation on all subordinate third parties who inevitably become aware thereof and warrants that such subordinate third parties shall comply with the non-disclosure obligation.  
2. If a die created by BOAL for the production of a specific profile has become unusable in whole or in part or the said production due to whatever cause, BOAL shall not be held to replace (or arrange replacement of) the die concerned, even though the Purchaser concerned has contributed to the development costs of the die concerned.  
3. If a die created by BOAL for the production of a specific profile has not been used for 3 years, because the Purchaser has not placed any orders with BOAL for this profile during this period, BOAL shall be entitled to destroy such die without creating any replacement obligation, even though the Purchaser has contributed to the development costs of the die concerned.
- O. Costs**  
1. All (collection) costs reasonably incurred by BOAL both in and out of court, as well as all costs reasonably incurred by BOAL in order to retain or exercise its rights towards the Purchaser, shall be borne by the Purchaser.
- P. Applicable law / Jurisdiction clause**  
1. All legal relationships between BOAL and the Purchaser, with exclusion of the Vienna Sales Convention, are governed by Dutch law.  
2. All and any disputes arising between BOAL and the Purchaser shall be exclusively brought before the competent court in the Hague except:  
a. where mandatory legal provisions prescribe otherwise; or  
b. BOAL in its capacity as claimant or petitioner opts for the competent court of the domicile of the Purchaser.
- Q. Dutch version prevails**  
1. The Dutch version of these General Terms and Conditions shall prevail over any translation thereof.

## BOAL B.V.

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Our 'General Terms and Conditions of Sales, Delivery and Payment', registered with the KvK, are applicable to all our quotations, agreements and deliveries.

