

BAKKER

VAKKEUKEN

PURCHASE CONDITIONS

Clause 1. Being bound by these Purchase Conditions

1. Bakker Professional B.V., Bakker Professional B.V. respectively, further herein referred to as: the 'Purchaser', invites the vendor to submit an offer to them stating a technical specification, quantities required, date and place of delivery, for the goods to be provided by the vendor to the purchaser under a statement of applicability of these Purchase Conditions.
2. The purchase agreement is formed if the purchaser places an order with the vendor and this order has been confirmed by the vendor to the purchaser.
3. The purchaser can prescribe for the vendor the use of a certain form for the order confirmation and a period within which this must have been returned to the purchaser.

Clause 2. Amendments

1. Amendments to the purchase agreement and deviations from these Purchase Conditions will only be effective if they have been agreed in writing or electronically between the purchaser and the vendor.
2. If any amendments would lead to an increase or decrease in the costs, any amendment to the purchase price resulting from this must be agreed between the parties in writing or electronically.
3. In the absence of any agreement with regard to the amendment to the purchase price, there will be a dispute between the parties to which Clause 21 of these Purchase Conditions will apply.

Clause 3. Quality and description

With due observance of anything else provided for in the order and the associated technical specification, the goods to be supplied must:

- a. correspond with what has been stated in the order with regard to the quantity, description and quality;
- b. be manufactured of sound materials and be of sound workmanship;
- c. be equal in all respects to the samples or models made available or provided by the purchaser and/or the vendor;
- d. deliver the performances (capacity, return, speed, finish etc.) as described in the order;
- e. be entirely suitable for the purpose specified to the vendor.

Clause 4. Inspection and test

1. If this is usual with regard to the respective goods, the vendor shall inspect with due care and test before despatch whether the goods correspond with what has been agreed. If required by the purchaser, the vendor will send him a message within due time with regard to the time and place of such a test in order to enable him to be present at the test. Moreover, the vendor shall provide the purchaser at his request with a certified copy of his inspection and test reports. If required by the purchaser and if he has notified the vendor of this within due time, this inspection and test must take place at the expense of the purchaser and by an independent research institute to be specified by the purchaser.

2. The purchaser is entitled to inspect the goods during their production, processing and storage insofar as this is possible without infringement of the patents, licences, secret processes and knowhow of the vendor. If the purchaser exercises this right, the vendor will ensure or have it ensured that facilities are in place such as can reasonably be required by the purchaser to this end.

3. If the purchaser at any inspection or test pursuant to the provisions in the two previous paragraphs establishes that the goods to be delivered are not in accordance with the description in the order, or that it is probable that on completion of the production this will not be the case, the purchaser must inform the vendor of this immediately. The vendor will then be obliged, notwithstanding the provisions in clauses 9 and 11, to take all further necessary measures to be able to comply with the technical specification specified in the order and with the provisions of the purchase agreement.

4. A vendor who disputes the outcomes of the inspection or the test by the purchaser or by the independent research institute he has specified, is entitled to carry out counter expertise or have this carried out at the expense of the party found at fault. If on the basis of the reports of these inspections and tests no agreement is reached between the parties, this will constitute a dispute between them, to which clause 21 of these General Purchase Conditions is applicable.

Clause 5. Packaging and despatch

1. The goods must be properly packaged (unless the nature of the goods dictates otherwise) and secured in such a way that they will reach their destination in a proper condition via normal transport. The vendor must take out sufficient insurance to the satisfaction of the purchaser against risks reasonably considered as present during the transport.

2. The goods will be delivered by the vendor at, or be despatched for delivery to the agreed location or locations in the ways stipulated in the order or as afterwards agreed.

3. If the vendor has provided pallets, packing cases, crates, containers etc. for packaging and the transport or has made these available by a third party - whether or not by payment of deposits or a security -, the purchaser will be obliged (unless it involves one-off packaging) to return these pallets etc. to the address specified by the vendor, failing which the purchaser will owe compensation to the vendor.

Clause 6. Storage

1. If for any reason whatsoever the purchaser is unable to take receipt of the goods at the agreed moment in time whilst the goods are ready for despatch, the vendor will at the purchaser's request retain and protect the goods, if the vendor's storage facilities allow for this, and take all reasonable measures to prevent deterioration in quality, until they are delivered to the purchaser.
2. The purchaser is obliged to reimburse the vendor for the storage costs according to the rate applicable at the vendor and, in the absence of these rates, according to the usual rates in the sector, from the moment that the goods are ready for despatch or from the date of the delivery agreed in the purchase agreement whichever is the later.

Clause 7. Transfer of ownership and risk

1. Subject to the provisions in paragraph 2 of this clause, the ownership and the risk of the goods will pass to the purchaser upon delivery.
2. If the vendor postpones the despatch at the request of the purchaser according to the provisions in clause 6, the ownership of the goods will pass to the purchaser on the date which will be further agreed to this end between them and the vendor will be obliged from that date onwards to store the goods separately as the clearly identified property of the purchaser. Nevertheless, the goods will then remain at the risk of the vendor as the holder of the goods until the goods have been delivered to the purchaser at the place or places meant in clause 5 paragraph 2.

Clause 8. Property of the purchaser

1. All models, plates, films, drawings, photographs, stamps, other image, sound and information carriers or other aids provided by the purchaser to the vendor or manufactured or purchased by the vendor for and on the instructions and costs of the purchaser, will remain or become the property of the purchaser.
2. The vendor will keep such aids in a good condition and insure them and keep them insured against fire and theft, for as long as they are under his supervision.
3. The vendor will provide these aids at the first request in a good condition to the purchaser. However, the purchaser will then be liable for any damage suffered by the vendor due to delays.
4. If the vendor does not or not fully return the aids to the vendor or returns them damaged, either during the agreed delivery time or at the time meant in paragraph 3, the vendor will owe compensation to the purchaser. The purchaser is entitled to deduct this compensation from the purchase price payable by him.
5. The vendor is not allowed to use the aids for any other purpose than for preparing the goods for delivery intended for the purchaser; neither is he allowed to provide these aids to any third parties.
6. The vendor is obliged to take measures to ensure the secrecy of all details, information and all other aids provided by the purchaser as meant in paragraph 1.

Clause 9. Time of delivery

1. The vendor shall deliver the goods at the latest on the date specified in the order.
2. If a delivery period has been agreed, it will commence on the date on which the vendor confirmed the order or – if this is later – on the date on which the purchaser provided the vendor with the information, drawings, models, films, materials or aids to be provided by the purchaser, which the vendor needs in order to be able to begin fulfilling the order.
3. As soon as the vendor knows or expects that the goods cannot be delivered on time he will notify the purchaser of this immediately. If the parties do not succeed in settling the consequences of this delay in mutual agreement, any dispute arising from this will be governed by the arrangement of clause 21. The vendor is liable for any damage suffered by the purchaser due to the delay as well as by the late notification of a (probable) delay.
4. If the goods are fully or partially undelivered at the agreed moment and the parties cannot reach agreement about an extension of the delivery period and compensation of the damage due to delay, after a notice of default with a period of two weeks the purchaser will be entitled to consider the agreement as dissolved after a written statement. This dissolution not only covers the goods not yet delivered but also the goods which have already been delivered under the same purchase agreement, if these goods can no longer be effectively used as a result of the non-delivery of the remaining goods. The purchaser is not entitled to consider the purchase agreement as dissolved if the vendor can demonstrate that his interests in the dissolution of the sale are prejudiced more than the interests of the purchaser by a delayed performance.
5. In the event of a dissolution of the purchase agreement the purchaser will be entitled at the vendor's expense and risk to return to the vendor the goods which were already delivered under the same purchase agreement but which can no longer be effectively used and to claim back the payments from the vendor which he might have made for these goods.
6. On dissolution of the purchase agreement the vendor will be obliged to compensate the purchaser – apart from the damage meant in paragraph 3 – also for all further losses which the purchaser might suffer for instance due to a covering purchase and due to loss of profits.

Clause 10. Assembly

1. If it appears from the order that the goods must be assembled by the vendor at the location or locations specified by the purchaser, the vendor will ensure that sufficiently skilled personnel are made available at the time of delivery. The purchaser will provide facilities for these personnel or have this provided such as can reasonably be required to this end by the vendor.
2. In the case referred to in paragraph 1, a test will take place after the assembly in the presence of the purchaser and of the vendor or their representatives. The vendor undertakes to continue to provide skilled personnel until the test has led to a satisfactory result for both parties.
3. After the assembly the vendor will provide the purchaser with instructors for one week in order to train the purchaser's personnel in the use, the maintenance and the repair of the delivered goods.
4. The provisions in the previous paragraph apply also to other goods which do not have to be assembled, but for which training is required.

5. The provisions in the two previous paragraphs do not apply to goods the use, maintenance and repair of which are known or are deemed to be known to the purchaser.

Clause 11. Test and rejection

1. Insofar as no satisfactory test has already taken place during or after the production pursuant to clause 4 or after the assembly pursuant to clause 10, the purchaser will be obliged to test the goods of which the technical nature makes a test desirable or necessary, or to have them tested within one week after delivery. The purchaser is obliged to enable the vendor to be present at this test.
2. If faults appear during the test, the vendor will be obliged to have them remedied as soon as possible.
3. If remedying the faults is impossible or, considering the time and costs associated with this, is not justified, the purchaser will be entitled to reject the goods.
4. The provisions in the previous paragraphs are applicable accordingly to goods which do not have to be tested, but of which it appears upon their delivery that they are fully or partially not in accordance with the provisions and specifications of the order.
5. The purchaser must notify the vendor immediately of the rejection. If subsequently the parties do not reach agreement about the delivery of replacements, the purchaser will be entitled after a notice of default with a period of two weeks to consider the purchase agreement as dissolved without judicial intervention. The provisions set out in clause 9 paragraphs 3, 4 and 5 apply accordingly to this dissolution.
6. After dissolution the purchaser is obliged to return the goods already delivered as soon as possible to the location specified by the vendor at the expense and risk of the vendor. By this return delivery the ownership of the goods already delivered will again pass back to the vendor.
7. After dissolution the vendor is obliged to refund the purchaser immediately for any amounts of the purchase price already paid.

Clause 12. Warranty

1. The vendor is liable for damage to and by the goods occurring during the warranty period specified in the order unless the damage is the consequence of a design fault made by the purchaser or of a fault made by the purchaser in using and operating the goods.
2. In fulfilling his liability obligations the vendor is obliged within a reasonable period to repair the goods or their faulty parts or to replace them by new goods free of charge. The purchaser remains liable for further damage.

Clause 13. Damage or loss by or during transport

The vendor shall repair or replace goods which have been damaged or lost during transport free of charge provided the purchaser has sent a written notice to the vendor or verbally notified the vendor of this within a period such that the vendor is able to comply with the respective transport conditions of the carrier or – if the vendor delivers the goods by his own means of transport - within a reasonable period.

Clause 14. Price and payment

1. Unless the contrary has been agreed the purchase price includes the price for the
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goods, the costs of packaging, the transport and the delivery costs on site indicated by the purchaser and moreover, any costs of assembly and training, as meant above in clause 10.

2. The purchaser is entitled to deduct from the purchase price payable by him the difference between the extra amounts payable by the purchaser under the provisions in clauses 2 and 6 on the one hand and the amounts payable by the vendor under the provisions in clauses 8, 9, 11, 12 and 13 on the other hand.

3. The purchaser is obliged to pay to the vendor the agreed price, increased and decreased pursuant to the provisions set out in the two previous paragraphs at the time or the moments in time specified in the order.

4. If the purchaser exercises his right to storage as meant in clause 6, he remains obliged to pay the purchase price at the moment(s) in time specified in the order.

Clause 15. Legal requirements

1. The vendor warrants that the design, the composition and the quality of the goods which must be delivered pursuant to the order, comply in all respects with all requirements applicable in this respect which are imposed in laws and/or other rules and regulations in this respect by the authorities which are in force at the moment of entering into the agreement.

2. The provisions set out in paragraph 1 apply also to the normal use of the goods.

Clause 16. Infringements of intellectual property rights

1. The vendor shall indemnify the purchaser against any claims by third parties due to alleged infringements by third parties of the patents or models or other intellectual property rights accruing to them with regard to the production, repair or use of the goods delivered.

2. If any intellectual property right in the name of the vendor is vested in the design for the goods delivered, if the purchaser proceeds to repair the goods or has them repaired, this is not deemed as infringing these rights.

3. If any intellectual property right to the design for the goods delivered is vested in the name of the purchaser, the provisions in clause 8 paragraph 5 will apply accordingly.

Clause 17. Dissolution

1. Without prejudice to the provisions set out in clauses 9, 11, 12, 13 and 15 the purchase agreement will be dissolved by a written statement at the moment in time at which the vendor is declared bankrupt or applies for a provisional moratorium, or the court has granted an application by the vendor as a natural person, in which the debt rescheduling scheme is declared applicable or the vendor's goods are seized or he is placed under guardianship or he otherwise loses the ability to dispose of his assets or parts of them.

2. By the dissolution the mutual claims of the parties will become immediately due and payable. Clause 9 applies accordingly.

Clause 18. Compensation

1. The vendor will compensate the purchaser fully for all damage to property or persons which might arise for the purchaser, his personnel or for his buyers out of or as a result of acts, insofar as they can be considered as a form of breach or as a wrongful act by the vendor, his personnel or of other persons engaged by the vendor in fulfilling the order.

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This includes damage which might arise due to the presence, the use or the supply or removal of property of the vendor, his personnel or of other persons engaged by the vendor in fulfilling the order.

2. The vendor shall fully indemnify the purchaser against claims by third parties to compensate for damage as meant in the first paragraph. If a third party brings a claim in this connection against the purchaser, the purchaser shall inform the vendor of this immediately whilst sending the necessary details. For the rest the purchaser will refrain from any act in this connection unless the vendor gives his consent to this end or the vendor remains in default of defending the claim of the third party.

Clause 19. Applicable law

1. This agreement is governed by Dutch law.
2. The Vienna Sales Convention (United Nations Convention on Contracts for the International Sale of Goods, Vienna 11 April 1980, Bulletin of Treaties 1981, 184 and 1986, 61), is not applicable to this agreement.

Clause 20. Applicability

These Purchase Conditions are applicable to all offers and acceptances on the part of the purchaser. Insofar as the vendor would refer to other conditions in his offer or acceptance or elsewhere, the applicability of these is explicitly rejected.

Clause 21. Disputes

1. All disputes which might arise between the parties in connection with their agreement or from any further agreements and other acts in association with the present agreement such as for instance, although not limited to, wrongful acts, undue payments and unjustified enrichments, will be settled by the District Court of Noord-Nederland, based in Leeuwarden, subject to the extent that compulsory jurisdiction rules would prejudice this choice.
2. A dispute is considered to be present as soon as one of the parties has stated this.