

BLOOMMING GENERAL TERMS AND CONDITIONS OF SERVICES, SALE AND DELIVERY

Bloomming
Klokgebouw 239, 5617AC Eindhoven, The Netherlands

1. APPLICABILITY

1. These 'Bloomming General Terms and Conditions of Services Sale and Delivery' (hereafter: "General Conditions") apply to and form an integral part of all quotations, offers, confirmations and services or sale or other agreements concluded between Buyer on one hand and (one of the companies of) Bloomming;
(i) Bloomming is established in Eindhoven (Netherlands); Bloomming has been established under the Dutch national law.
2. Buyer in the General Conditions means: the counterparty of Bloomming.
3. The term 'goods' in these General Conditions includes services.
4. The applicability of any terms and conditions used by Buyer is expressly excluded.

2. QUOTATIONS / AGREEMENT

1. Unless otherwise stated, any offer or quotation by Bloomming is subject to contract.
2. An agreement shall take effect once an offer accepted by Buyer has been confirmed by Bloomming.
3. Orders for goods made on demand ("specials") cannot be cancelled.
4. Unless agreed otherwise all other orders may be cancelled or changed within ONE working day following the order confirmation by Bloomming. Any other change or cancellation of an order is subject to Bloomming's written approval and is subject to conditions by Bloomming.
5. If the price, discounts or dates of delivery are based on an apparent error, Bloomming may correct the mistakes or cancel the order.
6. All agreements can at all times be subject to credit approval by Bloomming. The aforementioned does not prevent Bloomming from requiring at any time security for compliance with Buyer's financial obligations.
7. Bloomming has the right to involve third parties in the execution of the agreement, without prior notice to the Buyer. Costs of these third parties will be recharged to the Buyer.

3. PRICE AND PAYMENT

1. All quoted prices by Bloomming VOF are in EURO
2. All prices are exclusive VAT and other government duties or taxes, as well as any costs incurred in the context of the agreement, such as administrative, transport and COD charges. These taxes and costs will be added to the sales price and form a part of the agreed invoiced amount due by Buyer.
3. If discount is agreed for the purchase of a certain quantity or range in an order, Bloomming is not obliged to apply the discount if fewer or different goods than those agreed are actually delivered.
4. Unless expressly agreed otherwise, all orders are accepted on the basis of PRE-PAYMENT.
5. Any invoice must have been paid on Bloomming's bank account not later than 30 (thirty) calendar days upon invoice date. In case of delivery of any order agreed on a PRE-PAYMENT condition takes place within the aforementioned term, the invoiced amount must be settled at least 5 (five) calendar days prior to the scheduled delivery date. No discount is allowed for early payments.
6. If the invoiced amount is not paid in within the payment term, then the Buyer is in default without any notice being required. In addition to any other rights and remedies Bloomming may have under applicable law, interest will accrue on all late payments at the rate of 1% (one percent) per calendar month or part of the month or the applicable statutory rate, whichever is higher.
7. In the event that collection is necessary all collection costs are payable by Buyer equal to 10% of the principal owed with a minimum of 500,00 euro. If the debt collection involves court proceedings then all legal costs, including legal advice and representation in court and out of court, as well as all execution costs, shall be for the Buyer's account. Any payment will first be imputed to any costs and/ or interest. After costs and interest are fully paid, payments will be imputed to the capital sum.
8. Even if the Buyer is of the opinion that the quality of the delivered goods or services is not in accordance with the agreed goods or services, this does not release him from the obligation to pay. The Buyer has no right to any deduction, discount, adjournment or set off.
9. If fewer goods are delivered, or received in good condition, than invoiced, and Buyer objects in good time, Buyer remains liable for the amount invoiced in respect of the goods received in undamaged condition.
10. In the event of any default by Buyer in the payment of any amounts, charges due, or other obligations, Bloomming has the right to postpone any further deliveries of any goods, without being liable for any losses or damages by Buyer. Such right shall be in addition to, and not in lieu of, any other rights and remedies available under the agreement or at law.

4. EXECUTION

1. Bloomming shall always make commercially reasonable efforts to deliver the services or goods within the delivery term. However, unless explicitly agreed otherwise in writing, delivery dates communicated in or acknowledged by Bloomming are approximate dates. Bloomming shall not be liable or be in breach of its obligations, when delivery is made sooner or later than the communicated delay.
2. If the agreed date is exceeded, Buyer is still obliged to accept delivery of the goods or services, unless before delivery Buyer has put Bloomming in default, allowing Bloomming with a reasonable period to execute the agreement, and such term has also expired.
3. Bloomming may postpone any delivery in the case of production problems affecting the quantity of goods or the quality of goods produced. If such delay last longer than 3 (three) calendar months, either party may cancel the order. Bloomming is not liable for any losses, including lost profits or savings by Buyer.
4. Unless explicitly agreed otherwise, any delivery is made Delivered At Place = delivery at premises Buyer; duties, taxes are for Buyer's account. Extra carriage costs may be charged in the event that the order amount remains under a set minimum order amount.

5. When Buyer fails to accept delivery of the goods or services, or fails to provide the information or instructions to enable delivery it is fully liable to Bloomming for all damages and losses suffered by Bloomming, such as (but not limited to) transportation costs, extra storage, handling and insurance. Regarding (re-)delivery, Bloomming may demand prior payment of all aforementioned costs.
6. Bloomming is entitled to partial delivery of the goods or services.
7. Upon delivery, Buyer shall check the condition of the delivered goods. If the goods have any defects, Buyer shall, in the presence of the carrier, open the packaging and check the goods for damage.
8. If the goods are damaged Buyer shall refuse delivery of the goods and have the carrier take it back. It shall notify Bloomming immediately by e-mail if possible with a picture of the condition in which the goods and packaging have been delivered.
9. The Buyer has to make sure that all the information or data that Bloomming renders necessary are provided to Bloomming timely.

5. CHANGES TO SPECIFICATIONS, COMPLAINTS AND RETURNS

1. Minor changes can occur in shape or colour depending on the material the good is made of or design of the good.
2. Depending on the materials used for its manufacture, the original goods may change in the course of time, due to environmental influences (UV = light and other for lacquered goods, colours, fabrics and other).
3. Bloomming is constantly searching to improve its goods. Goods delivered may therefore technically differ from goods ordered.
4. Buyer is obligated to check all delivered goods or services immediately after receipt. If the goods or services delivered are not, in the opinion of the Buyer, in accordance with the goods or services ordered or not all goods have been delivered, Buyer shall immediately notify Bloomming by e-mail and in any event not later than the fifth working day following the delivery date. Bloomming is not obliged to deal with complaints that have been received beyond this term. Any complaint filed by Buyer must be specified as detailed as possible with a digital photo annexed to the e-mail.
5. If the complaint, according to Bloomming, is justified, then Bloomming has the choice: (i) to replace the defect or missing goods, or (ii) to credit Buyer the purchase price.
6. Extra costs for mounting, dismounting or re-installation for replaced goods or goods taken back are fully at Buyer's charges.

6. SUSPENSION AND TERMINATION

1. Bloomming is entitled to suspend in whole or in part performance of its obligations under any agreement or to terminate the agreement if:
(i) Buyer has failed to comply on time, in full or at all with its obligations under this or previous agreements;
(ii) if having entered into the agreement, Bloomming has all reasons to fear that Buyer will not (be able to) comply with all its financial obligations;
(iii) Buyer failed to supply the requested security or any adequate security.
2. If, due to delay on the part of Buyer Bloomming cannot reasonably be expected to comply with the agreement upon the terms originally agreed, then Bloomming is entitled to cancel the agreement with immediate effect. Buyer shall be liable towards Bloomming for any and all costs or damages, or loss in profits suffered by Bloomming.
3. Bloomming is entitled to terminate the agreement if circumstances arise whose nature and extent means that Bloomming cannot be expected according to the principles of reasonableness and fairness to perform the original agreement.

7. LIMITATION OF LIABILITY

1. In the event Bloomming delivers a service or a design, Bloomming can give Buyer the opportunity to check the latest draft (-version) of the design(s). If the Buyer accepts the (latest) draft, the risk of any error will remain with Buyer. In that case Bloomming can never be liable for any mistakes, shortcomings or non-conformity.
2. Without prejudice to any mandatory legal rules, the following applies:
(a) Bloomming shall not be liable for any lost profits or savings, loss of reputation or goodwill, indirect or incidental or consequential damages arising out or in connection with the sale of the good(s) or the use of these whether or not any claim is based on tort, warranty, contract or any other legal possibility, even in the circumstances that Bloomming has been advised of any risks.
(b) Bloomming's aggregate and cumulative liability shall not exceed an amount equal to 50% of the purchase value aggregate and cumulative.
(c) Bloomming declines any liability for damages as a result of the use of services rendered by Bloomming.
3. Bloomming is entitled to involve third parties. Bloomming can be dependent on third parties in the execution of the agreement. That could be the case for example when Bloomming has to buy or order goods or services from third parties. Bloomming shall not be liable for any shortcomings or non-conformity which are due to third parties or the consequence of 'force majeure' (further specified in art. 8 of these General Conditions).
4. Bloomming's liability shall at all times be limited to the maximum amount covered by Bloomming's insurance for the type of damages.
5. If, for whatever reason, the liability of Bloomming is not covered by Bloomming's insurance, then the liability of Bloomming will be limited to the amount of the order. If the order has a duration of three months or more, the liability will be limited to the amount of the order in the last three months before the event for which Bloomming is held liable.

8. FORCE MAJEURE

1. In the event of force majeure, the obligations of either party are suspended until the situation of force majeure has ended. If the force majeure lasts longer than three (3) calendar months, then either party is entitled to terminate the agreement without any liability to compensate the other party.
2. 'Force majeure' includes, in addition to the definition by law, import and export bans or controls by, or due to, any government or power, the failure of suppliers or service providers of Bloomming to deliver on time or at all, suspension of work by, or a high amount of sick leave amongst, the employees of Bloomming or its suppliers.
3. Bloomming is also entitled to rely on force majeure if the situation of force majeure begins after Bloomming should have fulfilled its obligations.
4. Insofar as at the time the situation of force majeure commences Bloomming has partly fulfilled its obligations under the agreement or is still able to do so, then Bloomming is entitled to invoice for all the parts of the agreement it has complied with or will comply with. In such a case Buyer is obliged to pay as if it were a separate agreement.

9. RETENTION OF TITLE

1. All goods delivered remain the property of Bloomming until Buyer has fulfilled all its obligations to Bloomming in full. If any invoice remains unpaid, Bloomming's retention of title shall also cover all goods previously delivered which have been paid for by Buyer.
2. Goods that are subject to retention of title can only be sold in the context of normal business practice and may not be pledged or otherwise encumber the goods subject to retention of title.
3. If any attachment is levied by a third party upon the goods subject to retention of title, then Buyer shall inform the third party levying the attachment of the retention of title and notify Bloomming of this immediately.
4. Buyer undertakes to keep insured the goods subject to the retention of title against fire, explosion, or water damage, as well as against theft. On demand by Bloomming, Buyer shall provide a copy of the insurance policy, as well as ensure that the rights under the insurance policy covering the goods subject to the retention of title shall be transferred to Bloomming or that Bloomming is subrogated in these rights.
5. Without preceding consent, Buyer is legally not competent nor authorized to establish any security rights on the delivered goods.

10. INTELLECTUAL PROPERTY RIGHTS AND COPYRIGHTS

1. Bloomming retains the rights and powers it accrues on the basis of the Copyright Act and other intellectual and industrial legislation and regulations relating to all the goods or services it supplies, insofar as these rights do not belong to any third party. All intellectual property rights are retained by Bloomming. Intellectual property and are never transferred by Bloomming, unless a written contract states otherwise.
2. Buyer may not have goods supplied by Bloomming copied elsewhere, or manufacture imitations thereof that differ in only minor details from the goods supplied, or become directly or indirectly involved in this. Bloomming remains entitled to copy or manufacture imitations for third parties.
3. Copyright or any other intellectual property of sketches, designs or models in whatever phase of elaboration these are and have been delivered to or shown to Buyer, remain the full property of Bloomming and may not be used by Buyer otherwise that agreed in writing and solely for that specific purpose. Any permitted use does not mean that intellectual property rights have been transferred.
4. Bloomming also remains entitled to use (parts of) intellectual property (which may be developed for Buyer) for purposes of third parties, other Buyers or clients of Bloomming. Bloomming will not be liable to Buyer for any damages and Buyer guards Bloomming of claims of third parties.
5. Without a prior written permission by Bloomming, Buyer is not allowed to copy pictures, designs, brochures, DVD's and other material or to use the information on its internet site. Permission by Bloomming does not affect the rights of the author of the information provided.
6. Intellectual property rights are also retained by Bloomming. In case Bloomming has delivered designs or any other goods, these goods will remain the property of Bloomming.
7. In case Bloomming has developed an application, working files, content management systems and/or source-codes of websites, these will remain the property of Bloomming. The Buyer will never be submitted to consideration of these files. After termination of the agreement, the Buyer will not be allowed to use these goods, unless a written agreement states otherwise.
8. Data of the Buyer, which is stored by the Buyer in the database and on servers of Bloomming, will remain property of the Buyer. Bloomming will not use this data for it's own purposes, nor will it be passed to third parties.

11. TERMINATION OF THE AGREEMENT

1. Both parties can terminate the agreement. Termination has to be in written form, with a notice-period with a minimum of two weeks.
2. In the event of provisional termination, Bloomming is entitled to remuneration of the work that has been done. Bloomming is also entitled to compensations of the costs that have been made.

12. DOWN TIME/FAILURE OF WEBSITES AND/OR CMS

1. Buyer acknowledges and accepts that the Content Management System (CMS), or other services provided by Bloomming, are (part of) a complicated technical system, that has to be maintained- and is updated regularly. As a result of maintenance, (technical) failure or updates, but also as a consequence of other circumstances, the system might not be accessible for a period of time. Bloomming is obligated to make an effort to limit this so called down time to an absolute minimum. Buyer acknowledges and accepts that the functioning of the CMS and the website is dependent on numerous third parties and circumstances, on which Bloomming is dependent and has no influence. Bloomming is for example dependant on the ISP of Bloomming, the ISP of the Buyer/user, the telecom companies, etc. etc. As a consequence, Bloomming excludes all liability for any down time of the CMS and/or the website.
2. Bloomming will make (not more than) an effort to sustain applications 24 hours a day, 7 days a week, except for any maintenance.
3. The Buyer acknowledges and accepts that due to the complexity of the system, there is a possibility that maintenance, (technical) failure, other circumstances, or updates can lead to defects. The Buyer is obligated to report every and any defects to Bloomming immediately.
3. Bloomming will try to eliminate the defect as soon as possible. Bloomming is entitled to charge a fee for any of these services.

13. APPLICABLE LAW / DISPUTES

1. All agreements are subject to the law of the Netherlands. The court with exclusive jurisdiction is that covering the area where Bloomming VOF has its registered office at the time a dispute arises. This also applies if the goods have been delivered in part or entirely abroad or if Buyer has its registered office or is domiciled abroad, unless mandatory law provides otherwise.
2. The parties shall always endeavour to resolve a dispute amicably, before any application is made by either party to the court.
3. The terms of the Vienna Sales Convention shall not apply.

14. FINAL TERMS

1. The version that is binding is the latest version published on <https://bloomming.com/generalconditions> at the time the agreement is entered into.
2. If any provisions in these general terms and conditions are void or revoked by the courts, the remaining provisions remain in force. Bloomming and Buyer shall negotiate substitute provisions that are in line with the original provisions in terms of purpose and scope.

