

BASIL®

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STANDARD TERMS AND CONDITIONS OF DELIVERY AND PAYMENT OF BASIL B.V.

VALID AS OF 1 JANUARY 2016

ARTICLE 1. GENERAL AND DEFINITIONS

- 1.1 These general terms and conditions of delivery and payment (hereinafter: "Conditions") apply to all Instructions of, Agreements with, including each subsequent instruction and/or changed or additional instruction and/or all legal acts by Basil B.V. with its registered office in Silvolde (hereinafter: "Basil").
- 1.2 In these Conditions the following terms have the following meaning:
 - Offer: an Offer, subject to contract, by Basil to deliver goods and/or services to the Other Party;
 - Basil: the legal entity Basil B.V. with its principal place of business in Uft, and all those who are directly and/or indirectly involved in the execution of the Instruction can rely on these Conditions;
 - Instruction: each Written Agreement between Basil and the Other Party;
 - Agreement: whereby the one party, Basil, binds itself towards the Other Party, the Client, other than on the basis of an employment contract, to carry out Work consisting of something other than the creation of a good of a tangible nature;
 - Other Party: every legal or natural person, acting in the execution of a profession or business who by means of an Agreement has given Basil instructions to deliver goods and/or services;
 - Work: all acts, whether or not requiring effort, for which the Client has given instruction;
 - Written: a letter, fax, e-mail or deed.
- 1.3 All words and expressions with a capital letter in these Conditions have the meaning as set out in these Conditions. Words and expressions not further specified in these Conditions have the meaning as follows from the context.
- 1.4 Agreements, regulations and conditions which depart from these Conditions only apply if and insofar they have been expressly agreed in Writing with Basil or have been confirmed by Basil in Writing and leave these Conditions unaffected in all other respects.

ARTICLE 2. APPLICABILITY

- 2.1 These Conditions apply to every legal relationship between Basil and the Other Party to which Basil has declared these Conditions applicable including every Offer, quotation and Agreement between Basil and the Other Party as well as Work (including services) carried out by Basil on instruction of the Other Party.
- 2.2 The applicability of any standard terms and conditions in use by the Other Party are expressly rejected so that only the Conditions in use by Basil apply to all Agreements between the parties.
- 2.3 Departures from these Conditions are only valid if they have been expressly agreed between the parties in Writing.

ARTICLE 3. OFFER, QUOTATIONS AND FORMATION OF AGREEMENT

- 3.1 Every Offer and/or quotation issued by Basil is always subject to contract and subject to price changes unless the contrary is expressly stated or a term for acceptance is stated in respect of that Offer or quotation. Sending an Offer or quotation, in any form whatsoever, does not oblige Basil to deliver.
- 3.2 Statements on Basil's website relating to the goods to be sold are deemed to be an (possible) invitation to tender and do not bind Basil in any way whatsoever. In addition, the statements on the website are expressly intended as general information provision.
- 3.3 If an Offer made or quotation submitted by Basil has solely or partly been made on the basis of information provided by the Other Party, Basil may rely on the accuracy and completeness of this information. The Other Party is at all times responsible for the consequences of the provision of inaccurate and/or incomplete information.
- 3.4 Agreements with Basil are only formed in the following manner:
 - signing by Basil and the Other Party of a Written Agreement drafted by Basil;
 - Written recording by Basil of Agreements made with the Other Party.
- 3.5 Amendments or additions to an Agreement, either verbally or in Writing, made on behalf of Basil by its personnel, representatives, account managers, sellers or other intermediaries are only binding if such have been confirmed in Writing to the Other Party by an employee of Basil authorised to represent it.
- 3.6 The Other Party can only cancel an Agreement already entered into with the prior Written consent of Basil. Insofar as Basil accepts the cancellation, the Other Party is obliged to pay Basil compensation of at least 25% of the contract price, without prejudice to the right of Basil to claim full compensation.

ARTICLE 4. PRICES AND RATES

- 4.1 All prices referred to by Basil in its Offer(s), quotations, websites and Agreements etc. are always exclusive of the applicable VAT rate as well as of insurance, shipping and packaging costs, import duties, other taxes and any other levies mandatorily prescribed by government, unless expressly stated otherwise.
- 4.2 Prices are partly based on (cost) price determining factors applicable on the day of the formation of the Agreement. If, after the Agreement has been formed, one or more (cost) price determining factors sees an increase of more than 5% due to, inter alia, currency fluctuation, irrespective of whether or not this was foreseeable at the time of the Offer, Basil is entitled to charge a proportional increase to the Other Party, or to cancel the Agreement if the Other Party does not agree with the price adjustment, without being obliged to pay compensation to the Other Party.

ARTICLE 5. DELIVERY AND TRANSFER OF RISK

- 5.1 A delivery term stated by Basil applies between parties as a term of delivery by approximation only and not as a strict deadline. In the event of late delivery, the Other Party must issue Basil with a notice of default before it can be in default.
- 5.2 The delivery time of Basil may be extended by the duration of the delay on the side of the Other Party in the performance of its obligations under the Agreement or Agreements entered into with Basil at an earlier date.
- 5.3 Unless expressly agreed otherwise, the delivery is deemed to have taken place the moment the goods to be delivered have left Basil's warehouse. From the moment of delivery, the goods are at the risk of the Other Party. The Other Party accepts that from the time of delivery onwards, Basil is never liable for damage to the delivered goods, irrespective of whether or not the Other Party has taken delivery of the goods at that time. The Other Party also accepts that Basil is never liable for damage to delivered goods or persons caused during, or as a result of, the loading or unloading of goods or damage caused at the place where the goods have been delivered by or on behalf of Basil.
- 5.4 For shipments to the Other Party, Basil may charge a handling and/or shipping costs fee. If this is the case, this will be included in the Agreement entered into with the Other Party. Special packaging and/or packaging required by the Other Party are also invoiced. The manner of shipment and the mode of transport are at the discretion of Basil. The Other Party is obliged to take delivery of the purchased goods and/or services within the agreed delivery time(s).
- 5.5 If the Other Party does not take delivery and/or refuses to take delivery of the goods before the expiry of the delivery term and therefore fails to cooperate in taking delivery of the goods, Basil is entitled to:
 - either store the goods for the account and at the risk of the Other Party, the risk of loss of quality included, in its warehouse or elsewhere. Despite this manner of storage, the goods are deemed to have been delivered to the Other Party. Basil shall immediately notify the Other Party in writing of such storage, stating the storage, shipping and other costs in that event due by the Other Party;
 - or, without any prior notice of default, terminate the Agreement wholly or in part to the extent the delivery has not (completely) been carried out, without prejudice to the right of Basil to claim full compensation for the loss it has suffered. The loss suffered is set at least 50% of the sale price of the goods not taken delivery of.
- 5.6 Basil is always entitled to perform an Agreement by means of partial deliveries.
- 5.7 Exceeding the delivery term by Basil does not entitle the Other Party to compensation, termination or suspension of its own obligations under the Agreement or previous Agreements, unless there has been intent or gross negligence to be equated with such, on the part of Basil.

ARTICLE 6. PAYMENT

- 6.1 Unless otherwise agreed between the parties, all payments must be made cash on delivery except in the event the invoice to be issued by Basil states otherwise. Payment shall be made in a manner to be indicated by Basil in the currency stated on the invoice, without any reduction, discount, suspension or set-off by the Other Party being permitted. Objections to the amount of the invoices do also not suspend the payment obligation on the part of the Other Party.
- 6.2 When paying by bank or giro, the payment date is the date the giro or bank account respectively of Basil has been credited.
- 6.3 Basil sets in principal a credit limit for the Other Party. In the event the credit limit is, for specific reasons, withdrawn or the total outstanding claims exceed the credit limit, Basil is compelled to deliver to the Other Party on a cash on delivery basis unless a different security can be agreed in consultation.

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VALID AS OF 1 JANUARY 2016

- 6.4** If the payment term agreed between the parties has expired, the Other Party is in default by operation of law without any further notice of default being required. Basil is not obliged to notify the Other Party of the expiry of a payment term.
- 6.5** Without prejudice to any other rights Basil might have, the moment the default occurs the Other Party owes Basil an interest sum on the outstanding invoices equal to the statutory commercial interest in force at the time.
- 6.6** The interest on the due and payable sum shall be calculated from the moment the Other Party is in default until the moment of payment of the outstanding amount in full, whereby part of a month shall count as a whole month.
- 6.7** Basil is also entitled to charge the Other Party all judicial and extra-judicial (collection) costs reasonably incurred by Basil in connection with the failure of the Other Party to perform its payment obligations or perform those on time, all this with due observance of the Debt Collection Act [de Incassowet]. In respect of Agreement(s) with legal persons the following applies. The extra-judicial collection costs are at least 15% of the due and payable invoice amount with a minimum of EUR. 500 without prejudice to the right of Basil to claim the actual extra-judicial costs, should this be greater than the minimum amount.
- 6.8** Basil is entitled, irrespective of the payment reference indicated by the Other Party, to apply the payments made by the Other Party firstly to reduce the charged extra-judicial collection costs, then to reduce the accumulated arrear interest and finally to reduce the still outstanding invoices where the oldest invoices are deemed to be paid first.
- 6.9** Basil is always entitled, both before and after the formation of the Agreement, to demand security for the payment obligations of the Other Party, such on suspension of the obligations on the part of Basil in the context of the Agreement entered into between the parties until such time the relevant security has been provided; all this without prejudice to the right of Basil to specific performance, compensation and/or termination of the Agreement wholly or in part and without any judicial intervention being required in that respect. In addition, Basil shall therefore never be liable for any payment or compensation.

ARTICLE 7. RETENTION OF TITLE

- 7.1** Without prejudice to the provisions in article 5 of these Conditions, the ownership of the goods only transfer to the Other Party when all that the Other Party owes Basil pursuant to deliveries or work, including interest and costs, has been paid fully and irrevocably to Basil (and therefore can no longer be reversed).
- 7.2** If the Other Party fails to perform its (payment) obligations or fails to perform those in full, Basil is at all times entitled without any prior demand being required, to repossess the unpaid goods or to reclaim such without prejudice to its other rights, in particular its right to compensation for loss suffered.
- 7.3** A payment by the Other Party, irrespective of its payment reference to the contrary, firstly serves to settle the unpaid goods which have already been sold or delivered on by the Other Party, subsequently to settle the costs incurred by Basil, next to settle interest due and finally to settle amounts which have remained unpaid for the longest time.
- 7.4** If an attachment is levied at or against the Other Party on goods which have been delivered by Basil and pursuant to the above provisions are or could be the property of Basil, the Other Party is obliged to notify Basil of such attachment immediately and notify the attaching party that these goods are or could be the property of Basil.
- 7.5** The Other Party is obliged as security for the performance of all its current and future obligations towards Basil, on demand of Basil, establish in favour of Basil a nonpossessory pledge on the goods delivered to the Other Party by Basil and to sign a deed establishing the right of pledge to this end.
- 7.6** The Other Party is not entitled to dispose the goods delivered subject to the retention of title and/or pledged goods or have them serve as security for claims of third parties.
- 7.7** The Other Party is permitted to sell and transfer goods within the context of its normal business operations to third parties. This permission lapses by operation of law at the time the Other Party fails in any way in respect of the claims for which the retention of title and the right of pledge has been established, a moratorium has been applied for, or the Other Party is declared bankrupt or the statutory debt management scheme is declared applicable.
- 7.8** If the Other Part creates a new good from the goods delivered by Basil, the Other Party creates such good for Basil. The Other Party then keeps the newly created good for Basil until such time the Other Party has paid all the amounts due pursuant to the Agreement in full.

ARTICLE 8. INSPECTION AND COMPLAINTS

- 8.1** The Other Party is obliged to immediately inspect the goods, including the packaging, delivered by Basil for shortages and/or damage or to carry out this inspection out after the notification by Basil that the goods are at the disposal of the Other Party.
- 8.2** Any complaints must, insofar as it relates to externally observable defects, be notified to Basil in Writing within three (3) working days after opening of the packaging.
- 8.3** Any complaints relating to non-externally observable defects must be notified to Basil in Writing within three (3) working days from their discovery.
- 8.4** Exceeding these terms result in the right to complaint lapsing.
- 8.5** Complaints include all complaints of the Other Party in connection with the quality of a delivery, not being deviations in respect of the technical design and the model permitted to the manufacturer and Basil insofar as these do not adversely affect the value of the delivery.
- 8.6** In the event of a well-founded complaint, Basil is obliged to replace and/or credit the goods complained of as soon as possible. This shall take place after receipt and inspection of these goods in the warehouse of Basil, without Basil being held liable for any (consequential) loss.
- 8.7** Goods in respect of which a complaint has been lodged on time must, but only after the prior consent of Basil, be returned to the address of Basil postage paid.
- 8.8** Legal actions and defences, based on facts which would support the assertion that the goods do not correspond to the Agreement, lapse after one (1) year after the notification referred to in article 8.2 and 8.3 of these Conditions.
- 8.9** Submission of a complaint does not suspend the payment obligation of the Other Party in respect of the goods in dispute.

ARTICLE 9. GUARANTEE

- 9.1** Basil guarantees the soundness and quality of the goods it has delivered and/or processed, all this with due observance of all that provided for elsewhere in these Conditions.
- 9.2** Basil undertakes for a period of two (2) years after the date of purchase of a good by a Consumer, to repair defects to the good for its account and/or have this repaired. This guarantee does not apply to goods as referred to in article 9.3 and 9.4. The guarantee includes repairs (wages) and parts.
- 9.3** A guarantee for goods purchased elsewhere by Basil on instruction of the Other Party is only given if and to the extent the relevant manufacturer/supplier provides a guarantee.
- 9.4** In that case the guarantee only applies towards the Other Party, not towards third parties.
- 9.5** Claims under the guarantee only cover the repair of any possible construction and/or manufacturing defects, or to have it repaired. Any loss, both direct and indirect, caused by the improper functioning of the goods delivered by Basil, are not covered by the guarantee.
- 9.6** Claims under the guarantee are not recognised if during the use of the goods delivered by Basil, the manufacturer's and/or installation instructions have not been properly observed, if the delivered goods have been used for different purposes than is usual or are, or have been, treated, used or maintained in an improper manner.
- 9.7** If the Other Party does not comply with its obligation(s) under the Agreement, Basil shall be released from its guarantee obligations as a result.

ARTICLE 10. REPAIR

- 10.1** Repairs of the goods delivered by Basil are undertaken with due observance of the provisions of these Conditions and are carried out to the best of its knowledge and ability.
- 10.2** Basil is not liable for theft, loss or damage of the goods given to it for repair by the Other Party unless this is a result of an intentional act or gross negligence attributable to Basil.
- 10.3** If it has been agreed with the Other Party that the repaired goods shall be collected by the Other Party and after repeated Written notification that the goods are ready, it breaches this obligation, Basil is entitled to sell the goods.

ARTICLE 11. LIABILITY

- 11.1** Basil is never liable for loss suffered and/or to be suffered by the Other Party or third parties, whether or not in a legal relationship with the Other Party, unless the loss suffered is the direct result of gross negligence or an intentional act by Basil or any third party it has engaged.

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VALID AS OF 1 JANUARY 2016

- 11.2** In addition to the provisions of article 11.1 above, Basil's liability is limited to the performance of all that the supplier has obliged itself on the basis of the guarantee provisions, such with a maximum of EUR. 2,500 per event.
- 11.3** Irrespective of the provisions of article 11.1-11.2 above, consequential loss, trading loss, personal injury, loss due to operational failures, loss of income or loss caused by third parties engaged by Basil or loss as a result of a different use of the delivered goods than for which the goods were intended, suffered by the Other Party or any third parties is never eligible for compensation.
- 11.4** The Other Party accepts that the limitations of liability as set out in these Conditions may also be relied upon towards the Other Party by employees of Basil or by third parties engaged by it.
- 11.5** The Other Party is obliged to adequately insure itself against loss in the widest sense of the word which is/could be the result of goods or services delivered (or provided on loan) by Basil, all this irrespective of whether or not Basil itself has taken out liability insurance.
- 11.6** Basil is never liable towards the Other Party or third parties for errors in drawings, calculations, appendices, product descriptions, availability information, measurements, specifications and technical data it has provided.
- 11.7** If and insofar as Basil is and/or were nevertheless to be liable, this liability of Basil is in any event limited to the amount, the stipulations and conditions in respect of which there is a claim pursuant to the liability insurance(s) taken out by Basil.

ARTICLE 12. INTELLECTUAL PROPERTY RIGHTS

- 12.1** Intellectual property rights include, inter alia, patent rights, copyrights, trademark rights, drawing and design rights and/or other (intellectual property) rights including technical and/or commercial know how, methods or concepts, whether or not patentable.
- 12.2** The Other Party expressly acknowledges that all intellectual property rights in respect of the products, supplied or produced designs, sketches, images, drawings, dies and models, represented information, notifications and other statements in respect of products delivered by, or on instruction of, Basil are vested in Basil, its suppliers or other entitled parties.
- 12.3** Unless otherwise agreed, Basil retains all the intellectual property rights referred to in article 12.2 even if the Other Party has wholly or partly paid for those.
- 12.4** Without the prior Written consent of Basil, the aforementioned intellectual property rights, products and all products designed and/or produced by or on instruction of Basil may not, directly or indirectly, be imitated, copied or adapted by the Other Party, all in the widest sense of the word, without the Written consent of Basil, irrespective of whether or not Basil has for the realisation of these rights, products of the mind or products charged costs to the Other Party.
- 12.5** Only Other Parties, with whom Basil has entered into an Agreement, are entitled for the duration of the Agreement and with reference to the source, use photos and texts in combination with Basil products. Basil shall annually make a list of photos and text available to the Other Party to this end. Only the most recently provided list with photos and texts may be used. It not permitted without the Written permission of Basil to edit and/or cut the photos and texts provided by Basil. The Other Party may not send photos and texts to resellers unless Basil has given Written permission for this.
- 12.6** In addition to rights to which Basil is entitled pursuant to the law and the Agreement, Basil expressly reserves the right, in the event of the breach of one of the provisions of this article, to claim specific performance and/or withdraw permission for the use of the tradename Basil, photos and texts without Basil being liable for compensation for this towards third parties.

ARTICLE 13. INDEMNITY

- 13.1** The Other Party indemnifies Basil against claims from third parties relating to intellectual property rights relating to materials or data provided by the Other Party which are used in the performance of the Agreement.
- 13.2** The Other Party indemnifies Basil against claims from third parties in respect of loss relating to, or resulting from, the Agreement performed by Basil if and to the extent Basil is not liable for this towards the Other Party pursuant to the provisions of article 11.

ARTICLE 14. FORCE MAJEURE

- 14.1** In these Conditions force majeure means, in addition to that included in the law and case law in that respect, all external causes, whether or not foreseen, over which Basil is not able to exercise any control, yet because of which the whole or partial performance of the Agreement can in all reasonableness and fairness not be expected of Basil. It includes, but is not limited to: operational failures at Basil,

strikes at Basil, its suppliers or carriers, disruptions, including build-up of traffic irrespective of its cause, government measures, failures or delays in deliveries to Basil, fire, water damage, failures in the energy supply or failures of means of communication, hard and software faults and damage to Basil's property, import and export obstructions as well as theft.

- 14.2** Basil is not obliged to perform any obligation pursuant to the Agreement entered into with the Other Party if it is obstructed in doing so as a result of a circumstance which cannot be attributable to it and which is not on the basis of the law, a legal act or common opinion, for its account. In such situation Basil is entitled to terminate the Agreement wholly or in part or temporarily suspend it, without the Other Party and/or third parties being able to claim specific performance and/or compensation.
- 14.3** If due to the force majeure the delivery by Basil to the Other Party is delayed by more than 4 months, then, in addition to Basil, the Other Party is also entitled to terminate the Agreement wholly or in part or temporarily suspend it, without the Other Party being entitled to any compensation in that respect. This termination does not extend to goods which have already been delivered; those must be paid to Basil with due observance of the provisions of article 6 of these Conditions.

ARTICLE 15. SUSPENSION AND TERMINATION

- 15.1** Without prejudice to any other rights Basil might have and the provisions elsewhere in these Conditions, Basil is entitled, without any further notice of default being required, to terminate the Agreement in respect of the unperformed part by means of an extrajudicial declaration and Basil is at all times entitled to take back all goods unpaid for without prior notification and at the expense and risk of the Other Party if:
- the Other Party is, or remains, in default of the performance of its payment obligation;
 - the Other Party applies for a moratorium;
 - a petition for the bankruptcy/liquidation of the Other Party is filed;
 - the Other Party loses its full or partial unfettered control over its assets and/or income;
 - any part of the possessions and/or assets of the Other Party are seized;
 - the Other Party sells or winds up its business.
- 15.2** In the event of a (partial) termination as referred to in the first paragraph of this article, Basil is entitled to compensation from the Other Party for loss consequent suffered by Basil, such with a minimum of 50% of the sale price of the relevant order.

ARTICLE 16. DISPUTES

- 16.1** All legal relationships to which Basil is party are exclusively governed by Dutch law even if an obligation is wholly or partially performed abroad or if the party involved in the legal relationship has its registered office there. The applicability of the Vienna Sales Convention is excluded.
- 16.2** Except where the law dictates otherwise, any dispute, of whatever nature, which might arise between Basil and the Other Party, including the taking of provisional or onerous measures, shall be heard by the competent court in the place where Basil has its registered office, without prejudice to the right of Basil to choose the court as provided for by legislation.

ARTICLE 17. OTHER

- 17.1** Each party guarantees that it shall keep all the information of a confidential nature received before, during and after entering into the Agreement from the other party or from a third party, confidential. Information is deemed to be confidential if this has been notified as such by the other party or if this arises from the nature of the information. Unless one of the parties is obliged to disclose such information pursuant to the law.
- 17.2** If provisions in these Conditions are unlawful, invalid or unenforceable, the other Conditions shall remain in full force. Basil and the Client shall in mutual consultation amend the provisions which are invalid at law in the light of the purport of those provisions in order to reflect the original intention of the parties.
- 17.3** These terms and condition are filed at the offices of the Chamber of Commerce Central Gelderland (The Netherlands) in Arnhem in January 2016 under number 09086961, and can also be consulted and downloaded from the following website www.basil.nl.
- 17.4** These Conditions are also available in Dutch and German. In the event of a conflict and/or interpretation of the used translated provisions, the Dutch text is guiding and/or decisive.