

**Art. 1 General**

- 1.1 The Following terms and conditions apply to all offers, quotations, orders, agreements, services and all subsequent contracts of whatever nature. The stated obligations will be applicable to all and any further commercial negotiations between Badotherm and any of its Buyers or organizations purporting to be a Badotherm Buyer. These conditions will govern all negotiations (unless stated otherwise) even if Badotherm does not refer to them during the negotiation stage. In situations where it may be necessary to refer to these terms and conditions these will be the only terms that will apply and the relevant version shall, without exception, be the one valid at the point the contract was concluded. These terms and conditions will be sent to the Buyer upon request.
- 1.2 Deviation and variation of these contractual obligations will not be considered unless confirmed expressly in writing to "Badotherm". Badotherm once in receipt of an application to vary these terms will notify its Buyer of the extent to which the variance/deviation will or will not be acceptable.

**Art. 2 Offer and Acceptance of Offer**

- 2.1 Any offer made by Badotherm will be non binding unless it has been expressly agreed in writing in advance. Any acceptance of the Buyer's offer will be binding and may be accepted by Badotherm for a period of up to 2 weeks from the date of their receipt.
- 2.2 Offers are valid for 30 days, from date stated therein unless another period has explicitly been provided for in the offer. Badotherm is entitled to revoke the offer within the period of validity or amend it in part or in its entirety.
- 2.3 In the event that oral representations (i.e. additions) have been made in respect of an offer or amendment of an offer or that alterations are anticipated by Badotherm these representations shall only be binding on Badotherm to the extent that they have been expressly stated in writing and have been agreed by Badotherm Management.
- 2.4 All Badotherm contract documentation (i.e. order confirmation) shall be considered as binding in respect of determining Badotherm's obligations for delivery and service to its Buyers.
- 2.5 Badotherm drawings, illustrations, dimensions, weights or other data in Badotherm literature including prices shown in pricelists, quotations, advertisements etc. and or documents included with the same, will not be classed as applying contractual obligations upon Badotherm. They will serve only to promote Badotherm products. And will not be relevant in any contractual dispute.
- 2.6 If unforeseen technical reasons dictate that the quantity of items being manufactured specifically for a client must vary from the quantity ordered then +/-5% variance shall be deemed acceptable providing full discussion with the client is effected and considered reasonable.
- 2.7 Up until the point of delivery, Badotherm reserves the right to, without prior knowledge, alter the construction, material selection, design and/or specification providing that necessary amendments are in line with technical innovation and are discussed with the Buyer.
- 2.8 An agreement with the Buyer is made at the point of Badotherm' express acceptance or order confirmation. If the binding nature of the offer follows from the offer itself, an agreement may also be concluded by the acceptance of the offer.

**Art. 3 Price**

- 3.1 Unless a fixed price has been explicitly agreed in writing and in advance, the prices stated by Badotherm will be based on cost prices at the order confirmation point. At

any time when exceptional circumstances dictate a price increase, for example, currency fluctuations or material surcharges etc. Badotherm reserves the right to amend the prices accordingly.

- 3.2 For all orders, where the price has been calculated from Badotherm catalogues, brochures or price lists, the prices shown in the current issue of the price list will be applicable unless expressly stated in writing and confirmed by Badotherm Management.
- 3.3 Prices are quoted in Euro based on EX-WORKS or EX-WAREHOUSE delivery from Badotherm and exclude Value Added Tax (BTW) and other taxes, levies and duties, assembly and installation charges, packaging costs, loading and unloading, transport and insurance charges unless these have been expressly written into the contract and have been agreed by Badotherm Management.

**Art. 4 Payment Terms**

- 4.1 Unless otherwise expressly stated, all outstanding payments should be settled in full without charge to payee's account no later than 30 days from the date of the invoice. Badotherm shall be entitled to apply a credit restriction surcharge or cash discount in appropriate circumstances providing it has been detailed on the invoice.
- 4.2 Bills of exchange and cheques shall only be accepted as provisional payment. Payment by bill of exchange or cheque will be deemed to be complete when the amount due has been irrevocably credited to Badotherm by our bank.
- 4.3 Any assignment by a Buyer to a third party of any liability in our favour shall only be valid providing Badotherm consent has been stated explicitly in writing.
- 4.4 If, after a contract has been concluded, it becomes apparent that the credit worthiness of a Buyer is questionable by virtue of the commencement of insolvency proceedings, slow payment, unfavourable information or previous delays in the payment of earlier amounts, Badotherm shall be entitled to suspend its performance of any obligation arising under a contract until adequate additional security has been provided. As such any period for delivery of goods or services shall be extended accordingly. Badotherm shall also be entitled to deliver goods on a cash on delivery basis. If Badotherm has already made partial deliveries under any contract, not withstanding section 4.1 above Badotherm reserves the right to demand immediate payment of any outstanding invoice. Should the Buyer fail to meet Badotherm' demands for security within a reasonable period Badotherm shall be entitled to rescind the contract without prejudice to payment in full and compensation of costs, damages and interest due. In this situation the Buyer will have no right to seek compensation.

**Art. 5 Interest in case of delayed payment**

- 5.1 If a party does not pay a sum of money when it falls due the other party is entitled to interest upon that sum from the time when payment is due to the time of payment.
- 5.2 Unless otherwise agreed, the rate of interest shall be 2% above the average bank short-term lending rate to prime borrowers prevailing for the currency of payment at the place of payment, or where no such rate exists at that place, the same rate in the State of the currency of payment. In the absence of such a rate at either place the rate of interest shall be the appropriate rate fixed by the law of the State of the currency of payment.

**Art. 6 Delivery**

- 6.1 Badotherm reserves the right to make partial consignments of goods and services.
- 6.2 Timescales for the delivery of goods and services shall not be agreed or communicated to the Buyer until an agreement is reached on every aspect of the orders execution and the Buyer has provided any necessary information, documentation, test samples, and parts to be provided for inclusion into the contract and has made any advance payment if required. In the event of a discrepancy being found, Badotherm will inform the Buyer immediately.
- 6.3 Where the Buyer has failed to perform any agreed action or is in default of agreed payment terms, Badotherm reserves the right to suspend any agreed delivery of goods and services until the Buyer has rectified the failure or default.
- 6.4 Where Badotherm fails to meet a performance deadline, we will only accept liability for damages and contract termination where it is proved that the delay is Badotherm' responsibility and the Buyer has previously allowed us a minimum grace period of 30 days and such period has ended without resolution. Liquidated damages for delay shall not exceed 5% of the price of the delayed goods or such other maximum amount as may be agreed by the Badotherm Management.
- 6.5 The time of delivery stated or agreed upon shall always be an estimated time, unless the contrary is apparent from the contract documentation. Where a delivery date is stated and goods have not been taken up within the given period or if a delivery time has been agreed and the Buyer fails to accept delivery within the given period, Badotherm reserves the right to invoice the goods in question and further to store the said goods at its premises at the full expense of the Buyer.
- 6.6 Where the Buyer instructs Badotherm to transport goods on his behalf, any transport arranged by Badotherm will be executed at the Buyer's expense and risk. Badotherm' liability is limited to the extent of cover / compensation provided by any relevant transport insurance taken out in conjunction with the delivery by the Buyer. Where the Buyer fails to provide transport insurance, Badotherm shall not accept any liability for damage.
- 6.7 Once goods have been received at the Buyer's premises any accidental deterioration of product or accidental destruction of product will be the Buyers responsibility. Badotherm shall not accept any liability for damage however caused.
- 6.8 Where goods are identified as being damaged and the Buyer does not accept responsibility for any damage caused on his premises Badotherm shall be entitled to seek compensation for any damage incurred.

**Art. 7 Force Majeure**

- 7.1 In the event of situations beyond Badotherm' control, such as war, civil uprising, shortages of energy or raw materials, sabotage, strikes, legitimate lockouts and any other operational interruption outside of Badotherm control, or beyond the intervention of the Dutch or European public authorities, Badotherm shall be absolved of its obligation to perform any rights and duties under any affected agreement until the circumstances of the force majeure have ceased to exist.
- 7.2 Such events shall automatically extend the timescales for delivery of goods and services until a more appropriate date. This will also apply to circumstances of late or improper deliveries of goods and services from Badotherm' suppliers, sub-contractors and other stakeholders over whom Badotherm has no control.

- 7.3 In the event that a force majeure situation has extended beyond a six week period, it will, for the purposes of the contract, be deemed to be a permanent force majeure. In this event either the Buyer or Badotherm will be in a position to rescind the contract by giving notice to the other party.
- 7.4 Despite the interruption of force majeure to performance of a contract, the Buyer will remain liable under the original contract for any sums due for goods or services supplied prior to the interruption.

**Art. 8 Warranty**

- 8.1 Badotherm warrants the durability and quality of its products delivered for a timescale not exceeding 12 months from the date of original supply, unless expressly agreed in writing; consumables are not covered by this warranty. This warranty is governed by the provisions of applicable law pursuant to the following criteria:
  - This warranty shall only be valid if the goods supplied have been used in accordance with the relevant Badotherm specification laid down for a products use. Where the basis of any defect is by virtue of an unusual chemical, physical or thermal occurrence that has not been notified to Badotherm prior to the conclusion of the contract, the Badotherm warranty will not apply. This warranty shall also not apply where a product has been repaired or modified by a third party, unless explicit consent has been obtained from Badotherm in writing, before any repair or modification has been performed.
  - Where a product defect causes only minimal difference in terms of value and / or fitness of the delivered item and / or where minimal differences in quality are evidenced the Badotherm warranty will not apply.
  - Notwithstanding a Buyer's legal obligation to examine and report defective products, any apparent defect must be reported to Badotherm in writing within 5 working days of the discovery of the defect; otherwise warranty cover will not be applicable.
  - Once a defect in a product is identified the client will be responsible for contacting Badotherm to obtain written shipping and delivery instructions for returning the Product.
  - If, following Badotherm inspection, a product is deemed to be defective Badotherm will be responsible for ensuring that the defect is rectified, or at Badotherm' discretion provide the Buyer with a replacement product at our own expense. The Buyer shall allow Badotherm a minimum period of 30 days to provide the replacement.
- 8.2 Notwithstanding a Buyer's entitlement to any right under the Badotherm warranty detailed above the Buyer has an obligation to inform Badotherm, in writing within 5 working days of our request, whether and in which manner he shall exercise such rights. Where no such declaration is forthcoming within the given period or where a Buyer demands supplemental performance, the Buyer shall not be entitled to claim any other right until an extended minimum period of 30 days has passed without result
- 8.3 Badotherm warranty rights are only applicable to the Buyer detailed in the contract. Any assignment of rights under this warranty to a third party is specifically excluded.
- 8.4 Any shipping, repair or other cost incurred as a result of an unjustified complaint based upon product quality shall be exclusively at the expense of the Buyer.

- 8.5 Additional warranty rights are valid for Chemical Seals and can be sent separately on request.

**Art. 9 Inspection**

- 9.1 Upon receipt of Badotherm goods the Buyer is entitled to inspect the goods before each shipment, which includes the packaging it is delivered in, or cause the same to be so inspected for damage, defects and omissions immediately upon delivery. Badotherm must notify the Buyer within a reasonable time before the shipment that the goods are ready for inspection at the agreed place.
- 9.2 The Buyer forfeits his rights for inspection if he is not able to inspect the shipment within 10 days after notification of Badotherm. After this term the Buyer accepts the goods without inspection and will release the shipment and provide a waiver to Badotherm.
- 9.3 In the absence of any inspection or notification as referred to in 9.1 and 9.2 the delivery will be deemed to comply with the contract documentation.

**Art. 10 Liability**

- 10.1 Badotherm shall only be liable for damage occasioned to third parties to the full extent of Dutch or European Law, and only if any of Badotherm Management, is found guilty of intentional misconduct or gross negligence. In addition Badotherm shall also be liable in the case of infringement of material contractual obligations, performance of which the Buyer may be deemed to especially rely on, even in actions of ordinary negligence. In the case of intentional misconduct or gross negligence caused by any Badotherm Agent, deemed to be outside of senior management status, Badotherm will only accept liability for an amount of any typically foreseen damage, taking into account all important and identifiable circumstances. Badotherm will not accept any liability for damages occasioning from consequential loss and will not be liable for loss of profits, loss of assets and any loss caused by indirect damage howsoever caused.
- 10.2 The restrictions of liability detailed in 10.1 expressly exclude all claims for damages irrespective of their legal origin. However, they shall not apply with respect to damage to life, limb or health. And in addition all claims under the relevant product liability legislation detailed in Article 186 of the sixth Book of the Netherlands civil code shall be specifically unaffected.
- 10.3 Badotherm has effected liability insurance, to the extent that it covers potential third party claims, to an amount equal to € 1.134.450,00 per event. Damage to goods delivered by Badotherm has been specifically excluded in the policy and therefore is also excluded in relation to the Buyer.
- 10.4 The aforesaid insurance does not apply to the United States of America and Canada and therefore Badotherm will not accept any liability for any export or transit to those countries.
- 10.5 The above limits on liability shall apply equally to all Badotherm employees and other Third party subcontractors duly employed by Badotherm.
- 10.6 If the Buyer should consider it in his interest to extend the insurance beyond the coverage described in section 10.3 above, he must inform Badotherm of this intention during the contract negotiation stage and in particular which sections of the insurance he wishes to extend. Where this extension can be included into the contract, Badotherm is willing to arrange it on behalf of the Buyer at the Buyer's expense. The Buyer will be responsible for paying any costs incurred at the conclusion of the agreement. Once the insurance has been effected Badotherm will duly submit a copy of the insurance policy to the Buyer.

**Art. 11 Claims**

- 11.1 Any claim must, without prejudice, to the provisions set out for claims falling outside of the Badotherm warranty, detailed at section 8.2 above, be received by Badotherm in writing within 5 working days of the Buyers receipt of the goods or services. In the case of hidden defects it applies that any claim must be lodged within the Badotherm warranty period of 12 months, see section 8.1 above. In the event of any claim an accurate statement of the nature and foundation of the complaint(s) must be submitted to Badotherm in writing.

**Art. 12 Intellectual Property Rights**

- 12.1 Any trademark, patent right or copyright appertaining to Badotherm and embodied in any goods and services supplied by us shall not be transferable to the Buyer. Any replication, publication or circulation to third parties of cost estimates, drawings, samples, plans or other technical documentation without Badotherm' express and prior written consent is forbidden.
- 12.2 Any tools or specialist equipment specifically purchased or manufactured by Badotherm for use in conjunction with the execution of a clients order shall, unless expressly stated in writing, remain under Badotherm' ownership irrespective of any cost charged to the Buyer for their purchase or manufacture.
- 12.3 Badotherm permits the Buyer to use its designated software, technical data, drawings installation and operating instructions and any other Badotherm commercial document for his own use providing he does not make this information available to any third party by virtue of selling, hiring or loaning it without express prior written consent.
- 12.4 In the event of the Buyer being held liable for infringement of any intellectual property right pertaining to Badotherm, the Buyer is obligated to notify Badotherm immediately of any ensuing action and further is permitted to request that Badotherm may prevent any legal action if it appears just and appropriate for Badotherm to do so.
- 12.5 Badotherm shall not be liable for any infringement of intellectual property rights occurring as a direct result of any action performed by the Buyer that is inconsistent with the approved, intended or legal use of any Badotherm product.

**Art. 13 Retention of Title**

- 13.1 The ownership of delivered goods shall remain vested in Badotherm until the time that payment is deemed to have been made in full and final settlement of the contract concluded.
- 13.2 Badotherm shall permit the Buyer to sell to a third party any goods delivered, in the direct course of his business. However in so doing the Buyer hereby agrees to assign to Badotherm all of his rights and duties against his client in relation to the invoice value of the reserved Badotherm goods based upon the contract between the Buyer and Badotherm.
- 13.3 Subject to any assignment of a Buyer's right to Badotherm, Badotherm permits that the Buyer be entitled to collect the value of such claim, providing he is not in default of any payment. However, upon Badotherm' written request, the Buyer will be obligated to provide Badotherm with the full details of his clients name, provide Badotherm with all relevant documentation, so required and shall further be obligated to inform his client of the assignment noted in Badotherm' favour should our Buyer be in default of payment.

- 13.4** The Buyer shall not be permitted to pledge reserved Badotherm goods or assign them by way of security to any third party. The Buyer shall further be obligated to inform Badotherm immediately of any notification of legal proceedings of any nature whatsoever. The Buyer must allow Badotherm the opportunity to commence defence proceedings against any third party claiming title to the attached property under the Dutch civil code. Badotherm shall not be liable for the cost of any action deemed necessary to protect its right of title. These shall be born by the Buyer.
- 13.5** In circumstances where Badotherm property has perished due to any statutory provision of law, the Buyer hereby agrees to assign to Badotherm, his entitlement to any claim against the owner up to and including the invoice value of the Badotherm reserved goods.
- 13.6** In the event of delivered, reserved goods becoming combined or consolidated with third party goods outside of Badotherm control, the Buyer shall be obligated to grant Badotherm co-ownership of the goods up to and not exceeding the invoice value of the reserved goods so combined.

**Art. 14 Health and Safety**

- 14.1** When a Buyer returns goods to Badotherm for repair, modification or return, the Buyer hereby agrees to strictly adhere to his obligations in respect of relevant Dutch and European Health and Safety Legislation.
- 14.2** The Buyer hereby warrants that any product sent back for repair, modification, calibration or return shall be appropriately packaged and that all equipment filled either with hazardous substances and/or matter or products which may have otherwise come into contact with such materials and/or matter are specifically marked as potentially contaminated. Full details of the extent of the hazardous substance and /or matter must be detailed in full in any corresponding documentation sent accompanying the product. And where applicable a detailed safety sheet should also be included.
- 14.3** Badotherm reserves the right to refuse acceptance of a product sent back for repair, modification or return where the obligations in respect of section 14.2 above are not complied with. This refusal may become operational at any time and without either restriction or notice and may specifically apply where the product in question is not of Badotherm manufacture, and as such Badotherm provides no legal warranty for its repair, modification or return.
- 14.4** Badotherm reserves the right, without prejudice, to enforce any claim for compensation in respect of a Buyer's failure to observe his legal obligations to Badotherm in respect of any hazardous substance and/or matter so supplied.

**Art. 15 Data Protection**

- 15.1** Badotherm reserves the right to process Buyer's data relating to business transactions within its group of companies and to any outside affiliated organization where applicable. The Buyer hereby acknowledges that Badotherm may centrally process such data as may be appropriate and gives his consent to Badotherm to perform such an action.

**Art. 16 Applicable Law**

- 16.1** All offers, contracts and agreements duly completed by Badotherm will be subject to the law of the Netherlands, except for situations where the Dutch law has been superseded by European legislation; in this instance European Law will govern the settlement of any contractual dispute.

- 16.2** Where the Buyer is a merchant, a legal entity governed by public law or an independent body in accordance with public law, any contractual dispute must be filed at the court with geographical and subject matter jurisdiction over the head office of our company (or over the affiliated company that effected delivery of goods under the contract). In addition to this Badotherm reserves the right to be entitled to commence legal proceedings at the location of the Buyers head office if Badotherm so chooses.

**Art. 17 Title of the clauses**

- 17.1** The titles of the Clauses of these Conditions are intended exclusively to simplify the construction and organisation of these Conditions and they have no other significance; in particular these titles cannot be used for any interpretation of these Conditions.

**Art. 18 Validity**

- 18.1** If any provision in these Conditions is not completely valid or only partially valid and/or not enforceable as a result of any legal directive, judicial judgement or any directive, decision, recommendation or measure from any local, regional, national or supranational authority or body or otherwise then this will have no effect on the validity of the other provisions in these Conditions. If a provision in these Conditions might not be valid for one or other reason indicated in the previous sentence but would be valid if it had a more limited range or scope then this provision will be automatically valid with the most far-reaching or extensive range or scope with which or within which it is valid

These terms and conditions were duly registered at the Chamber of Commerce in Rotterdam.