

GENERAL TERMS AND CONDITIONS

Sales and service (laser) machines

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hereafter referred to as "user"

Article 1 Definitions

1. In these general terms and conditions, the following terms are used in the following sense, unless explicitly stated otherwise:

User: the user of the general terms and conditions;

Purchaser: the counterparty of the user, whether or not acting in the context of a profession or business;

Agreement: any agreement between the user and the purchaser.

Article 2 General

1. These general terms and conditions apply to any offer, quotation and/or agreement between the user and a purchaser for the production, sale and delivery of goods (such as: (laser) machines, machine accessories, parts and similar goods) and services, as far as these conditions have not been explicitly deviated from in writing by the parties.

2. The general terms and conditions also apply to all agreements for maintenance, installation and repair work (including subscriptions) and to agreements with dealers. In the latter case, the specific general terms and conditions for dealers shall prevail, unless the user decides otherwise. The general terms and conditions also apply to all agreements with user, for the execution of which third parties need to be involved.

3. Purchaser's general terms and conditions do not apply, except if and as far as these have been explicitly accepted in writing by the user.

4. If one or more provisions of these general terms and conditions are invalid or may be annulled, the remaining provisions of these general terms and conditions shall remain fully applicable. User and purchaser shall then consult in order to agree on new provisions to replace the invalid or annulled provisions, whereby the purpose and meaning of the original provision(s) shall be taken into account as far as possible.

Article 3 Offers and quotations

1. All offers and quotations submitted by user are without obligation. User shall only be bound by offers and quotations if the acceptance thereof is confirmed in writing by the purchaser within thirty days of the presentation of the offer or quotation.

2. Delivery times mentioned in offers and quotations of user are indicative and, if exceeded, do not entitle purchaser to annulment or compensation.

3. The prices in offers and quotations are excluding VAT and other government levies as well as shipping and any transport and packaging costs unless explicitly stated otherwise.
4. If the acceptance by purchaser deviates (on secondary points) from the offer made, user shall not be bound by it. In that case, the agreement will not be effectuated as per this deviating acceptance, unless user indicates otherwise unambiguously in writing.
5. A compiled quotation shall not oblige user to deliver part of the goods included in the offer or quotation at a corresponding part of the quoted price. The offer or quotation shall be accepted or rejected in its entirety by purchaser.
6. Offers or quotations do not automatically apply to subsequent orders.
7. Any technical and/or other (user) requirements (whether or not based on a schedule of requirements) set by purchaser for goods and/or services to be delivered by user which differs from the usual standards and requirements must be reported to the user in writing before the agreement is concluded. User shall only be bound by this if he agrees in writing to these additional technical and/or other (user) requirements prior to the conclusion of the agreement.

Article 4 Execution of the agreement

1. User shall execute the agreement to the best of his knowledge and ability and in accordance with the requirements of good craftsmanship, such based on the current technical knowledge.
2. If and in so far as required for the proper execution of the agreement, user is entitled to have certain activities performed by third parties. The application of Sections 7:407(2) and 7:409 of the Dutch Civil Code is explicitly excluded.
3. Purchaser shall ensure that user shall be provided in due time with all data which user indicates to be necessary or which purchaser should reasonably understand to be necessary for the execution of the agreement. If user is not provided in due time with the data necessary for the execution of the agreement, user shall be entitled to suspend the execution of the agreement and/or to charge purchaser for the additional costs resulting from the delay at the customary rates.
4. User shall not be liable for any damage whatsoever, direct or indirect, due to the fact that user has relied on incorrect and/or incomplete data provided by or on behalf of purchaser.
5. If it has been agreed that the agreement will be performed in stages, user may suspend the performance of such parts belonging to a following stage until purchaser has approved in writing the results of the stage prior to it.
6. In the event that work is carried out by user or by third parties engaged by user within the framework of the agreement at purchaser's site or at a site designated by purchaser, purchaser shall provide the facilities and safety reasonably required by user's employees or by third parties free of charge.
7. Purchaser shall indemnify user against any claims from third parties who may sustain damage in connection with the performance of the agreement and/or as a result of goods or services provided by user, and which is attributable to purchaser or is at the risk of the latter. If, for that reason or after delivery by purchaser to third parties, a claim is made against user by third parties, purchaser is obliged to assist user both in and out of court (at the expense of purchaser). All costs and damage on the part of purchaser and third parties will be fully at purchaser's expense and risk.

8. If purchaser provides user with information carriers, electronic files or software etc., the former guarantees that said information carriers, electronic files or software are free of viruses and defects.

9. If the agreement consists of the execution of work under a maintenance contract (whether or not based on a subscription), the following shall apply in addition to the other provisions of these general terms and conditions. The purchaser shall ensure that the user (or their staff) can carry out the work without interruption and at the agreed time and that the user (or their staff) has access to the necessary facilities during the performance of the work, such as: a. gas, water, electricity and internet; b. facilities prescribed under the Working Conditions Act and regulations. Purchaser bears the risk and is liable for damage or injury to persons and theft or loss of items belonging to purchaser, user and third parties, such as tools, materials intended for the work and/or equipment used in the work, which are located at or near the place where the work is performed or at another agreed place. Purchaser is obliged to ensure that it has adequate insurance cover against the risks referred to above. The work is considered to have been completed or accepted in the following cases: a. if the purchaser has approved the work; b. if the purchaser has actually put the work into use. Completion or acceptance of the work irrevocably excludes any claim by the purchaser for an attributable breach of contract by the user.

10. In the event that an employee of user drives out to the customer for the provision of services, such as but not limited to troubleshooting, maintenance or inspections, and upon arrival it appears that little or no work can or needs to be done, user reserves the right to charge a standard fee of at least one hour at the hourly rate applicable at that time. This fee is considered as (full or partial) compensation for travel time and other related expenses, such as but not limited to preparation costs.

The Customer must independently verify the necessity of invoking the services before invoking them.

Article 5 Delivery

1. Delivery shall take place from user's factory/office/warehouse.

2. Delivery shall be made at user's option on the basis of "Incoterms" (EXW or FCA) whereby the conditions applicable at the time of concluding the agreement shall apply.

3. Purchaser is obliged to accept the goods and/or services at the moment that user delivers them, has them delivered and/or performs them, or at the moment at which they are made available and/or performed under the agreement.

4. If purchaser refuses to take delivery or fails to provide information or instructions necessary for delivery, or if the goods cannot be transported to the delivery address due to force majeure, user will be entitled to store the goods at purchaser's expense and risk.

5. If the goods are delivered, user is entitled to charge purchaser for any delivery costs. These will then be invoiced separately. User shall not be liable for any delay in transport. Transport and installation of goods will take place at the expense and risk of purchaser.

6. In the event that user requires information from purchaser within the framework of the execution of the agreement, the delivery time shall commence after purchaser has provided this information to user.

7. If user has given a term of delivery, this is indicative. A stated delivery time shall therefore never constitute a deadline and as such shall not entitle purchaser to claim compensation or dissolution of the agreement. If a (delivery) date is exceeded, purchaser is obliged to give user notice of default in writing.

8. User is entitled to deliver the goods in parts, unless this has been deviated from in the agreement. User is entitled to invoice the thus delivered goods separately.

Article 6 Models

If a sample, model or "demo" has been shown or provided to purchaser, it is presumed to have been shown or provided only as an indication or example, without the goods delivered necessarily having to correspond to it (fully), unless it has been explicitly agreed that the goods delivered shall correspond to it fully.

Article 7 Investigation, reclamations

1. Purchaser is obliged to inspect the goods delivered or have them inspected at the time of delivery, but in any case within as short a period as possible after delivery. In doing so, purchaser shall examine whether the quality and quantity of what has been delivered corresponds to what has been agreed, including the (user) specifications stated in advance by purchaser, or at least whether the goods delivered meet the requirements that apply to them in standard (commercial) dealings.

2. Any visible defects or shortcomings must be communicated in writing to user within three days following delivery. Invisible defects or shortcomings must be communicated in writing to user within three weeks following their detection, but no later than six months following delivery. If purchaser fails to submit a timely complaint, purchaser's right to hold the user liable for any alleged defect in the performance of user expires.

3. If, pursuant to the previous paragraph, a complaint is lodged in time, purchaser shall remain obliged to take delivery of and pay for the goods and/or services purchased. If purchaser wishes to return defective goods, he may only do so following prior written consent from user and in the manner indicated by user.

Article 8 Prices

1. The prices charged by user are net, excluding VAT and excluding any other levies, as well as any costs or expenses to be incurred within the scope of the agreement, including shipping and administrative costs, unless user explicitly indicates otherwise.

2. If user and purchaser have agreed upon a fixed purchase price, user shall nevertheless be entitled to increase that price, inter alia -but not exclusively- in the circumstances as referred to in paragraph 3 of this article, article 9 paragraph 3 and customary price indexation.

3. User may increase prices if, between the time of the offer and the execution of the agreement, price changes have occurred as a result of, for instance, (changed) exchange rates and other cost-determining factors, such as wages, raw materials, semi-finished products, intellectual property rights and/or packaging materials. The above also applies to cost increases resulting from government measures.

4. Sales prices do not include any costs for transport and/or commissioning and/or assembly and/or maintenance, unless explicitly stated otherwise by user in the quotation or agreement.

Article 9 Amending the agreement

1. If during the execution of the agreement it appears that for a proper execution it is necessary to change and/or supplement the agreement, parties will timely and in mutual consultation adjust the agreement accordingly.

2. If parties agree that the agreement will be amended and/or supplemented, this may influence the time at which the execution is completed. User shall inform purchaser of this as soon as possible.

3. Should the change and/or supplement to the agreement have any financial and/or qualitative consequences, user shall inform the purchaser thereof in advance. If a fixed rate has been agreed upon, user shall indicate the extent to which the change or supplement to the agreement will result in an increase of this fixed rate.

Article 10 Payment

1. Payment by purchaser must be made within the period stated on user's invoice or, in the absence thereof, within 14 days of the invoice date, in a manner to be indicated by user and in the currency in which the invoice was made, without any discount or set-off.

2. Objections to the invoice amount do not suspend purchaser's payment obligation.

3. If purchaser should fail to make timely payment, purchaser will be legally in default, without a written notice of default from user being required. In that event, purchaser will owe (penalty) interest of 1% per month, unless the statutory (commercial) interest rate is higher, in which case the statutory (commercial) interest rate will apply. The interest on the due and payable amount shall be calculated as from the moment purchaser is overdue until the moment of payment in full.

4. In the event of liquidation, bankruptcy, seizure, suspension of payment or change of control on the part of purchaser, user's claims against purchaser will be immediately due and payable.

5. User shall be entitled to have payments made by or for purchaser go first of all to reduce the costs incurred by or on behalf of user, subsequently to reduce the interest still due and finally to reduce the principal sum and current interest invoiced. User shall be entitled, without this leading user to be in default, to refuse an offer for payment, if purchaser designates a different sequence of attribution. User shall be entitled to refuse full payment of the principal sum invoiced, if said payment does not include the interest still due, the current interest and the costs.

6. Subscriptions agreed upon by the purchaser with user are payable in full in advance. There will be no full or partial refund of subscription payments due, regardless of whether the customer uses or has used the subscription.

7. User is entitled to charge a credit limitation surcharge of 2%. This surcharge shall not be due if payment is made within 7 days of the invoice date.

8. Regardless of the agreed payment conditions, purchaser is obliged, at user's first request and at his discretion, to provide sufficient security for the fulfilment of the (payment) obligations by purchaser. User shall also be entitled to demand full or partial payment in advance. If purchaser does not comply with the above within the stipulated period, he will immediately be in default.

9. User is authorised to set off its debts to purchaser (or companies affiliated with purchaser) against claims which user has on purchaser (or companies affiliated with purchaser) and claims which companies affiliated with user have on purchaser (or companies affiliated with purchaser). In addition, user is authorised to set off its claims on purchaser (or companies affiliated with purchaser) against debts which user or companies affiliated with user have to purchaser (or companies affiliated with purchaser). Affiliated companies are defined as: all companies belonging to the same group in the sense of Article 2:24b of the Dutch Civil Code and a participation in the sense of Article 2:24c of the Dutch Civil Code.

Article 11 Retention of title

1. All goods delivered by user remain property of user until purchaser has fulfilled all following obligations from all agreements made with user:
 - a. the consideration(s) with regard to goods and/or services supplied and/or to be supplied by user;
 - b. any claims for non-fulfilment by purchaser of the foregoing agreements.
2. Purchaser is not authorised to pledge or encumber in any way the goods falling under user's retention of title. The goods falling under user's retention of title may only be sold on within the framework of normal business operations and may never be used as a means of payment. All claims which purchaser may acquire against third parties as a result of the authorised resale of goods subject to retention of title, shall be pledged to user at purchaser's expense in the highest possible rank.
3. If third parties seize or threaten to seize goods supplied by user subject to retention of title or wish to establish or assert a right to them, purchaser shall be obliged to inform user thereof as soon as may reasonably be expected and to do all that is reasonable and necessary to secure user's (ownership) rights.
4. Purchaser agrees to insure and keep insured the goods delivered under retention of title against fire, explosion and water damage as well as against theft and to make this insurance policy/these goods available for inspection by user on first demand. Purchaser will furthermore be bound to pledge to user, at purchaser's expense, all claims which purchaser has against insurers and insurance brokers in respect of the goods supplied subject to retention of title, in the highest possible rank.
5. If purchaser fails to perform his obligations or there is a well-founded fear that he will do so, user shall be entitled to take away or cause to be taken away the goods delivered under retention of title from purchaser or third parties holding the goods for purchaser. Purchaser is obliged to cooperate fully in this, on penalty of an immediately payable fine of 10% of the amount owed by purchaser, without prejudice to user's other rights and remedies (including the right to claim full compensation). In the event that user exercises his retention of title, purchaser hereby unconditionally and irrevocably authorises user or third parties to be appointed by user to enter all those places where user's property is located and to take back such property.

Article 12 Warranty

1. User warrants that the goods and services to be delivered are suitable for regular use and meet the reasonable requirements and standards that may be set for them. User does not give any (additional) warranty on delivered goods and services unless explicitly agreed otherwise. If the warranty provided by user relates to a good (or parts) produced by a third party, the warranty shall be limited to the warranty provided by that producer or supplier. User is only obliged to fulfil any guarantee if purchaser has fulfilled all obligations towards user.
2. The warranty referred to in paragraph 1 shall also apply if the goods to be delivered are destined for use abroad and if the purchaser explicitly notified user of this use in writing before concluding the agreement.
3. The warranty referred to in paragraph 1 applies for the maximum period stated on user's invoice and, in the absence thereof, for a maximum period of 6 months following delivery. The warranty does not apply to any resale by purchaser to third parties.

4. If the goods to be delivered do not comply with the warranty referred to in paragraph 1, user shall, within a reasonable period of time following receipt of a written notification regarding the defect from purchaser, at user's option, replace the goods or see to their repair, this also depends on the nature of the defect and the stock of user and/or the cooperation of the manufacturer. In the event of replacement, purchaser undertakes to return the goods to be replaced to user and to transfer ownership to user.

5. The warranty referred to in paragraph 1 does not apply if the defect has occurred as a result of (a) injudicious, improper and/or incorrect use by or on behalf of purchaser or third parties, (b) normal wear and tear, (c) incorrect or incomplete information (including a schedule of requirements) by or on behalf of purchaser or (d) installation, assembly, alteration and/or repair of the goods by purchaser or third parties, other than with the prior written consent of user.

6. The use of the goods supplied by user must be in accordance with the user's manual and any instructions provided by user. Use of the goods is entirely at the risk of purchaser and third parties. Cutting and engraving with (laser) machines may cause colour deviation in the material. These and other circumstances that (may) affect materials and product quality are not covered by the warranty mentioned in paragraph 1.

Article 13 Collection charges

1. If purchaser is in default or breach of contract with regard to the fulfilment of one or more of its obligations, all reasonable costs incurred in obtaining satisfaction out of court shall be borne by purchaser.

2. With respect to the extrajudicial (collection) costs, user shall be entitled towards purchaser to the maximum allowed compensation as laid down in the Decree on compensation for extrajudicial (collection) costs. With respect to the extrajudicial (collection) costs, in deviation from Section 6:96(5) of the Dutch Civil Code and the Compensation for Extrajudicial (Collection) Costs Decree, user shall be entitled to indemnification of 15% of the total outstanding principal amount (not paid on time), with a minimum of 70 euros for each invoice not paid on time or in full.

3. Reasonable judicial and execution costs shall also be borne by purchaser.

4. Purchaser owes interest over the incurred collection costs.

Article 14 Suspension and dissolution

1. User is entitled to suspend the fulfilment of his obligations or to dissolve the agreement (extrajudicially) immediately, if:

- purchaser does not fulfil the obligations from the agreement, or does not do so on time or in full.
- after the agreement has been concluded, user learns of circumstances that give good reason to fear that purchaser will not be able to meet the obligations arising from the agreement.
- purchaser has been requested to supply security for the fulfilment of the obligations arising from the agreement and fails to supply this security or it is insufficient in user's opinion.

2. Furthermore, user is entitled to dissolve the agreement (extrajudicially) immediately if circumstances arise of such a nature that fulfilment of the agreement is impossible or can no longer be demanded in accordance with the requirements of reasonableness and fairness, or if other circumstances arise of such a nature that (unaltered) maintenance of the agreement can no longer be demanded in all reasonableness.

3. If the agreement is validly dissolved by purchaser, but purchaser has already used the goods supplied by user, purchaser shall not be entitled to repayment of the full purchase price, but only a part, taking into account the aforementioned use and wear and tear.

4. If the agreement is dissolved, the user's claims against purchaser shall become immediately due and payable. If user suspends fulfilment of the obligations, he shall retain his claims under the law and under the agreement with purchaser.

5. If user dissolves the agreement pursuant to the foregoing provisions, user shall not be liable to purchaser or third parties for any costs or compensation.

6. User always retains the right to claim (additional) compensation.

Article 15 Liability

1. If the goods or services supplied by user are defective, user's liability towards the purchaser shall be limited to what is provided for under " Warranties " in these terms and conditions.

2. User is only liable for direct damage. User is not liable for any damage whatsoever, because user has assumed incorrect and/or incomplete data provided by or on behalf of purchaser, or due to injudicious or incorrect use of the delivered goods and/or services by or on behalf of purchaser. User shall never be liable for indirect damage, including consequential damage, loss of profit, lost savings and business interruption.

3. If user is liable for direct damage, then said liability shall be limited to a maximum of the invoice amount, or at any rate that part of the agreement to which the liability relates. The liability shall furthermore be limited at all times to a maximum of the amount paid out under user's insurance policy in the case concerned.

Article 16 Transfer of risk

1. The risk of loss or damage to the goods that are the subject of the agreement shall pass to purchaser at the time at which they are legally and/or actually delivered to purchaser and are thus placed under the control of purchaser or a third party designated by purchaser. Legal delivery is decisive here, i.e. the moment when purchaser acquires its full rights. This may also be the case while the item has not yet been collected by the purchaser or delivered by the user.

2. The stipulations of paragraph 1 are without prejudice to the stipulations of Article 5 of these terms and conditions.

Article 17 Force majeure

1. The parties are not obliged to comply with any obligation if they are prevented from doing so as a result of force majeure, i.e. a circumstance that cannot be attributed to their fault and for which they cannot be held accountable by virtue of the law, a juristic act or generally accepted practice.

2. In these general terms and conditions, force majeure shall be understood, in addition to its definition in law and in case law, to include all external causes, foreseen or unforeseen, over which user cannot exercise any control, but which prevent the user from fulfilling his obligations, such as, for example strikes, natural disasters, traffic obstructions, export obstructions or other government measures, lack of manpower, cybercrime, disruption of digital infrastructure and any other circumstance as a result of which the normal course of business in the company is obstructed as a result of which performance of the agreement by user cannot reasonably be required.

3. User shall also be entitled to invoke force majeure if the circumstance preventing (further) performance arises after user should have performed its obligation.

4. The parties may suspend their obligations under the agreement during the period of force majeure. If this period lasts longer than two months, either party shall be entitled to dissolve the agreement without any obligation to pay the other party damages.

5. Where, at the time when force majeure arises, user has already partially performed his obligations under the agreement or will be able to perform them and where independent value can be attributed to the part performed or to be performed respectively, user shall be entitled to separately invoice the part performed or to be performed respectively. Purchases shall be held to pay this invoice as if it were a separate agreement.

Article 18 Intellectual property and copyrights

1. Without prejudice to the other provisions of these general terms and conditions, user shall reserve the rights and powers vested in him according to the Copyright Act and other laws and regulations governing intellectual property rights.

2. Purchaser shall not be permitted to make changes to the goods and/or services supplied unless the nature of the goods supplied dictates differently or it has been agreed otherwise in writing.

3. Any designs, drawings, software and other materials or (electronic) files produced by user within the framework of the agreement shall remain user's property, regardless of whether they are made available to purchaser or to third parties. The foregoing goods are exclusively destined to be used by purchaser and may not be reproduced, made public or brought to the notice of third parties by purchaser without prior consent from user, unless the nature of the goods provided dictates otherwise.

4. User reserves the right to use any knowledge gained through the execution of the work for purchaser for his own (commercial) purposes, to the extent that no confidential information is brought to the knowledge of third parties. User does not owe purchaser any (extra) compensation for this.

Article 19 Confidentiality and GDPR

1. Both parties are obliged to maintain the confidentiality of all confidential information they have received from or about each other within the framework of the agreement. Information is deemed to be confidential if one party has indicated this or if this results from the nature of the information.

2. If, on the basis of a statutory provision or a judicial decision, user is required to provide confidential information to third parties designated by law or by the competent court and if, in that respect, user cannot invoke a legal right to refuse to give evidence or a right to maintain secrecy, acknowledged or permitted by the competent court, user shall not be liable to pay purchaser or any third party any compensation and purchaser shall not be entitled to dissolve the agreement.

3. Purchaser has taken note of and declares to agree with the privacy policy (GDPR) of user, as stated on the website of user (<https://www.brmlasers.com/privacy-policy>).

Article 20 Onward supply

1. Any onward supply by purchaser to third parties of goods and/or parts supplied by user, shall take place at the expense and risk of purchaser and under the full responsibility of purchaser.
2. It is also purchaser's responsibility to ensure, in the event of onward supply, that this does not take place to so-called "sanctioned countries", i.e. countries subject to national or international trade restrictions. User does not accept any liability for the consequences of onward supply of goods and/or components to sanctioned countries.
3. Purchaser indemnifies user against all claims of third parties in that respect.

Article 21 No take-over of staff

Purchaser shall, except with the prior consent of user, in no way employ or otherwise, directly or indirectly, have employed staff of user or of companies engaged by user for the performance of the agreement with purchaser.

Article 22 Applicable law

1. Any offer made by user and any agreement between user and purchaser shall be governed exclusively by Dutch law. This also applies if an undertaking is fully or partially carried out internationally and/or if the buyer is established in another country.
2. The Vienna Sales Convention (CISG) will not apply, unless user opts for it (fully or partially) in relation to purchaser.

Article 23 Litigations

1. The Dutch court in the district where user has its registered office has exclusive jurisdiction to hear disputes, unless the cantonal court has jurisdiction. Nevertheless, user has the right to submit the dispute to a court that is competent according to the law or international law.
2. Parties will only appeal to the court after they have made every effort to solve a dispute in mutual consultation.

Article 24 Interpretation and modification of the conditions

1. In the event of any necessary interpretation of the contents and scope of these general terms and conditions, the Dutch text shall always prevail.
2. User shall be authorised to amend these general terms and conditions unilaterally. The version of the general terms and conditions applicable at the time of the conclusion of the agreement shall always apply.