

1. DEFINITIONS

1.1.

The Customer: the party who requests a price quotation and/or provision of services and/or delivery of goods.

BKSI PACKING NV: the service provider

The Terms and Conditions: these General Terms and Conditions

Parties: the Customer and BKSI PACKING NV

2. APPLICATION

2.1.

These Terms and Conditions apply to any related provision of services/delivery of goods, price quotation and/or agreement by BKSI PACKING NV. The Terms and Conditions also apply to any extra-contractual obligations or liability on the part of BKSI PACKING NV pursuant to services it has provided and/or goods it has delivered.

2.2.

These Terms and Conditions apply to the exclusion of any other general or specific terms and conditions communicated by the Customer at any point in time, except if BKSI PACKING NV expressly accepted any derogating terms and conditions in writing. Unless there is an express agreement to the contrary, any derogation applies exclusively to the specific price quotation, agreement, assignment or delivery for which such derogation was agreed. If there is any discrepancy, inconsistency or ambiguity between derogating, specific terms and conditions expressly agreed with the Customer and the Terms and Conditions, then the specific terms and conditions expressly agreed with the Customer shall prevail to the extent of the discrepancy, inconsistency or ambiguity.

2.3.

BKSI PACKING NV packs all goods under the guarantee of the Syndicat Emballage Industriel Logistique Associée (abbreviated as SEI). The terms and conditions for the packaging laid down by the SEI apply to any packaging that BKSI PACKING NV does for the Customer.

2.4.

By placing an order, the Customer confirms that it has effectively taken due note of the Terms and Conditions and that it expressly agrees with the said Terms and Conditions.

3. PRICES

3.1.

All prices, handling fees and other rates stated in any agreement, price quotation or other document to which these Terms and Conditions apply exclude taxes, unless there is an express statement to the contrary.

4. PAYMENT

4.1.

The invoices of BKSI PACKING NV are payable 30 days after invoice date, unless there is an express agreement to the contrary. Despite any other provision to the contrary, all prices and other amounts owed to BKSI PACKING NV are charged in the currency determined by BKSI PACKING NV. BKSI PACKING NV reserves the right to convert such prices and other amounts owed into a different currency at the exchange rate at the time of the conversion. BKSI PACKING NV reserves the right to regularly check the Customer's creditworthiness. BKSI PACKING NV reserves the right to adjust the Customer's payment terms and conditions if there is an important change in the Customer's creditworthiness.

4.2.

If payment is not made within the periods laid down in Article 4.1 of the Terms and Conditions, BKSI PACKING NV is entitled, by operation of law and without notice of default, to late payment interest on the amount that the Customer owes, in keeping with the interest rate of the Law of 2 August 2002 relating to the combating of late payment in commercial transactions, and, as compensation for damages, to a fixed amount of 10% of the balance still to be paid, with a minimum of 125 euros, without prejudice to the right of BKSI PACKING NV to claim higher compensation, on condition that damages actually suffered are proven.

4.3.

If the Customer does not express any remarks, complaints or contestation within five working days after having received the invoice, it is presumed to irrevocably accept the invoice without any reservation. Any complaint that is notified to BKSI PACING NV after the period of five working days from receipt of the invoice is not admissible. Such complaint must be formulated in detail by registered letter.

If a part of the invoice is contested, the part of the invoice that is contested and the amount to which the contestation relates must be clearly indicated. Although, regardless of the contestation, the entire invoice remains due and payable if a part of it is contested, the Customer undertakes to immediately pay at least the non-contested amount or the amount that corresponds to the non-contested part, in accordance with the Terms and Conditions, and this provision cannot in any manner whatsoever prejudice the fact that the other parts and amounts are owed and payable or that the Terms and Conditions apply to them.

4.4.

If BKSI PACKING NV has various claims for payment vis-à-vis the Customer, they constitute one single and indivisible claim for payment regarding which BKSI PACKING NV can enforce all its rights and privileges.

4.5.

Setting-off between any claims by the Customer vis-à-vis BKSI PACKING NV and claims by BKSI PACKING NV vis-à-vis the Customer is excluded.

4.6.

BKSI PACKING NV is at all times entitled to demand payment guarantees or advance payments and to suspend the execution of the agreement until such guarantees or advance payments have been received.

5. LIABILITY

5.1.

BKSI PACKING NV is not liable for any delay in the execution or non-execution of its obligations due to force majeure. Force majeure is defined as any event that is not due to an error on the part of BKSI PACKING NV and that makes it impossible or more difficult for BKSI PACKING NV to fulfil its obligations or causes a delay in such fulfilment, which is understood to include hinder or damage directly or indirectly caused by storm, fog, lightning strike, flooding, high or low tide, frost, freezing, floating ice, war or danger of war (including civil war), government measures, rioting, sabotage, strike, lock-out, traffic disturbance, lack of work force, quarantine, staff illness, fire, explosion, subsidence, caving-in, damage caused by water, theft, vandalism, acts by third persons, invasion, occupation, revolution, rebellion, terrorism, strikes and breakage of equipment. This list is not exhaustive. If BKSI PACKING NV engages the services of third parties to fulfil its obligations, these provisions also apply if the force majeure occurs to such third persons.

5.2.

If BKSI PACKING NV is prevented from fulfilling its obligations pursuant to certain circumstances laid down in Article 5.1 or if BKSI PACKING NV can only fulfil them with a delay, BKSI PACKING NV is entitled to suspend all or part of any agreement with the Customer to which these Terms and Conditions apply. BKSI PACKING NV can terminate the agreement with the Customer by registered letter if the suspension lasts longer than 12 months. This can be done without prior judicial intervention in both cases. In that case, BKSI PACKING NV is released from its obligations without any pursuant liability vis-à-vis the Customer and without any right on the part of the Customer to claim fulfilment of the obligations. If, during the suspension or the termination, BKSI PACKING NV has partly fulfilled its obligations, the Customer shall pay the fulfilled part in proportion to the total price.

5.3.

BKSI PACKING NV can only be held liable for the proven damage and/or loss that is the direct consequence of an error on its part, for which error there is concrete proof. In no case whatsoever can BKSI be held liable for whatever type of general or specific indirect damage, financial damage, consequential loss or loss of a punitive nature (including the following non-exhaustive list: lawyers' fees, expert's fees and lost income or profit), even in the case of a serious error.

Under no circumstances whatsoever shall more than the damage actually suffered be compensated, in which case the liability of BKSI PACKING NV is limited in accordance with Article 12 of these terms and conditions.

5.4.

In no case whatsoever is BKSI PACKING NV liable in the following cases: any immaterial, indirect and/or consequential loss such as waiting times, storage times, operational loss, penalties and/or similar levies (this is not an exhaustive list), damage and/or loss that arose before or after the services were in fact provided by BKSI PACKING NV, force majeure as laid down in Article 5.1, defects to goods and/or containers, staff shortage, theft, error and/or negligence on the part of third parties (which is understood to include the third persons whom BKSI PACKING NV engages to fulfil its obligations) and/or on the part of the Customer, no or incorrect instructions or data provided by the Customer and/or by third parties, and any damage pursuant to an unforeseeable defect to the corporate resources of BKSI PACKING NV.

5.5.

If the Customer is of the opinion that BKSI PACKING NV is liable, the Customer must notify BKSI PACKING NV accordingly in writing, and state the facts that have led to the loss, as quickly as possible after such has been established. Said notification must at least contain the legal and factual grounds on which the claim is based, so that it is clear to BKSI PACKING NV exactly what loss is concerned, and an estimate of the loss.

5.6.

If the Customer can invoke an exemption and/or liability limitation vis-à-vis the party that has an interest in the goods and any other party, it is obliged to invoke them in favour of BKSI PACKING NV.

5.7.

If BKSI PACKING NV owes compensation for damages, BKSI PACKING NV is not obliged to pay such compensation for damages if this amount is less than 250 euros, taking into account these General Terms and Conditions and any agreement, price quotation or other document. BKSI PACKING NV shall only be responsible for the additional amount exceeding the loss claim amount of 250 euros.

5.8.

The Customer shall indemnify BKSI PACKING NV for any responsibility or loss relating to damage that BKSI PACKING NV could suffer if any person other than the Customer files a loss claim vis-à-vis BKSI PACKING NV for loss or damage as a direct or indirect consequence of the goods delivered and/or services provided by BKSI PACKING NV to the Customer in accordance with these Terms and Conditions.

5.9.

These Terms and Conditions in no way limit the right of BKSI PACKING NV to claim any amount from the Customer if the latter is guilty of contributory negligence regarding, or is an accomplice in violating, these Terms and Conditions or any agreement to which these Terms and Conditions apply.

6. COSTS AT THE CUSTOMER'S LIABILITY

6.1.

Any costs arising from decisions by the government are at the Customer's expense if BKSI PACKING NV needs to perform additional non-contractually agreed tasks pursuant to such decisions. BKSI PACKING NV shall perform said tasks for appropriate payment by the Customer.

6.2.

BKSI PACKING NV does not assume any responsibility whatsoever for carriage charges, harbour dues, taxes, duties (including, but not restricted to, customs, excise and VAT), contributions, penalties and any other costs relating to services provided by BKSI PACKING NV if BKSI PACKING NV acted in accordance with the Customer's instructions. The Customer shall pay compensation to BSKI PACKING NV and indemnify it for claims against BKSI PACKING NV or its employees for such costs.

7. INSURANCE

Unless it has been expressly agreed with the Customer, BKSI PACKING NV shall never provide any insurance for the goods, including goods that are stored in its warehouses or in warehouses that it rents. Parties and respective insurers mutually waive recovery for any damage pursuant to fire, explosion, lightning strike and impact by aircraft. The Customer shall personally assume responsibility for cleaning up and removing goods damaged by fire.

8. INFORMATION PROVIDED BY THE CUSTOMER TO, AND OBLIGATIONS OF THE CUSTOMER VIS-À-VIS, BKSI PACKING NV

8.1.

The Customer shall provide BKSI PACKING NV with any information that facilitates the service provision by BKSI PACKING NV. The Customer is personally responsible for the information that it gives to BKSI PACKING NV.

In its instructions, the Customer shall disclose at least the following information to BKSI PACKING NV:

- 1) correct and accurate description of the goods;
- 2) any instructions and any restrictions relating to the protection, handling or storage of the goods and service provision in general.

BKSI PACKING NV is not obliged to check the correctness, authenticity and/or validity of such information/documents.

8.2.

The Customer shall take any reasonable measures to limit the effect of any negligence or violation of the obligations by BKSI PACKING NV and to minimise the costs that BKSI PACKING NV must incur in such case.

8.3.

The Customer shall ensure that any exemption or defence by BKSI PACKING NV vis-à-vis the Customer and any restrictions of or conditions for the liability of BKSI PACKING NV vis-à-vis the Customer on the grounds of these General Terms and Conditions are also enforceable by and that they apply to the benefit of BKSI PACKING NV vis-à-vis third parties who have a contract with the Customer (and, in particular, vis-à-vis the Customer's customers).

9. RIGHT OF RETENTION

In accordance with Article 1948 of the Civil Code and with the provisions of the Law of 5 May 1872, BKSI PACKING NV is granted a right of retention and pledge to secure payment of any sum that the Customer owes BKSI PACKING NV for handling, storage of and additional activities for these and other goods and even if warehouse warrants or bearer storage certifications are deferred.

If the Customer remains in default, BKSI PACKING NV is entitled, after it has sent a warning, to have someone sell the goods in accordance with the procedure laid down in the Law of 5 May 1872. The new Law on pledges shall come into force by operation of law on 1 January 2018.

10. TERMINATION AND CANCELLATION

10.1.

In the following cases, BKSI PACKING NV can terminate with immediate effect and at the Customer's liability, without any judicial intervention and without any prior notice of default, notification, period of notice or compensation for damages, all or part of any agreement to which these Terms and Conditions apply by sending a registered letter to the Customer:

- 10.1.1. if the Customer remains in default of executing one of its obligations;
- 10.1.2. if the Customer loses every power of disposal over its assets or part thereof (for example, by bankruptcy, liquidation or any other collective measure that is aimed at protecting the Customer against its creditors).

In any of the aforementioned cases, the amounts that the Customer still owes BKSI PACKING NV but that are not yet due and payable, become due and payable by operation of law without any prior notice of default, demand or notification. BKSI PACKING NV can also suspend all or part of its obligations in the aforementioned cases.

10.2.

In the case of termination or suspension in accordance with Article 8.1 of the General Terms and Conditions, BKSI PACKING NV is never liable for any form of compensation for damages whatsoever. The Customer is obliged to safeguard BKSI PACKING NV against and indemnify it for any damage that might arise pursuant to or in relation to the termination or suspension.

10.3.

The Customer shall always pay any costs that BKSI PACKING NV has already incurred if the assignment is cancelled.

11. OTHER PROVISIONS

11.1.

If one or more of provisions of these Terms and Conditions and/or of any agreement relating to the provisions of services and/or delivery of goods by BKSI PACKING NV is or are declared null and void, unlawful or non-enforceable, such nullity, unlawfulness or non-enforceability shall not affect the validity of the other provisions. In such case, the Customer and BKSI PACKING NV shall make every effort to immediately agree to a valid provision in good faith to replace the null and void, unlawful or non-enforceable provision.

11.2.

The rights and obligations vesting in the Customer by means of these Terms and Conditions can only be transferred (by merger, demerger, contribution or transfer of a generality or of a business branch or of any other similar corporate restructuring, either under Belgian law or under any other law, or by any other means) if BSKI PACKING NV has given its prior written permission.

11.3.

The relationship between Parties shall by no means whatsoever be regarded as a partnership, a joint venture or any other association between them. Neither of the Parties shall be regarded as the other's executing agent or employee.

11.4.

If BSKI PACKING NV does not demand that the Customer comply with the strict application of these Terms and Conditions, such fact shall not be regarded as a waiver by BSKI PACKING NV of the right to strictly demand compliance at any point in time.

11.5.

BSKI PACKING NV can unilaterally change the Terms and Conditions in accordance with changes to its commercial policy and economic and legal necessity. The new Terms and Conditions enter into force immediately as and when the Customer is notified of them. The new Terms and Conditions therefore also apply to the agreements concluded earlier and the price quotations made earlier.

11.6.

Any price quotation by BSKI PACKING NV is subject to contract, except if it contains an express written statement to the contrary. If the order is placed and this deviates from what was provided for in the price quotation, BSKI PACKING NV retains the right to allow the price and time span within which the goods are packed to deviate from what is stated in the price quotation. BSKI PACKING NV is only bound by an order after it has confirmed it in writing.

11.7.

The Customer declares and guarantees that (1) it is a company that was validly incorporated, that it exists validly under the law of its country of incorporation and that it has the fully capacity, permission and right to exercise its activities and to conclude any agreement, price quotation or other document to which these Terms and Conditions apply, and (2) that any service provision and/or delivery of goods to which these Terms and Conditions apply are not or shall not be in conflict with any regulations, judgement, instruction, permit, agreement or obligation applicable to it by virtue of any agreement to which it is a party.

12. NON-COMPLIANCE WITH THE TERMS AND CONDITIONS

If the principal does not comply with these Terms and Conditions, BSKI PACKING NV retains the right to terminate any agreement with the principal without notice of default or appeal to the Court, and without prejudice against its other rights.

If BSKI PACKING NV is responsible for the damage that has arisen, then its responsibility is limited to the following amounts:

- EUR 80.00/kg of the entrusted or packed goods;
- with a maximum of EUR 80,000.00 per consignment or container;
- with a maximum of EUR 168,000.00 per loss claim, in which case the compensation for damages cannot exceed the original value of the goods, including the packaging and finishing. The guarantee is limited to the direct material damage, excluding any claim for (direct and indirect) commercial and moral detriment.

13. APPLICABLE LAW AND COMPETENCE

13.1.

These General Terms and Conditions and the agreements to which they apply are governed by Belgian law.

13.2.

The Antwerp Commercial Court, Division of Antwerp, is competent for any disputes between the parties.