

General terms and conditions for delivery to non-consumers

Of:

ABF Bearings BV
Nucleonweg 3a
4706 PZ Roosendaal
The Netherland

And

ABF Motors BV
Nucleonweg 3a
4706 PZ Roosendaal
The Netherlands

Hereinafter referred to as: user

Article 1. Definitions

1. In these general terms and conditions the following terms have the following meaning, unless explicitly stated otherwise:

Seller: the user of the general terms and conditions;

Buyer: the users' opposite party, acting in the course of business or professionally;

Agreement: the agreement between user and buyer.

Article 2. General

1. The provisions of these general terms and conditions apply to every offer and every agreement between user and buyer to which user has stated these terms and conditions to apply, insofar as parties have not explicitly derogated in writing from these terms and conditions.
2. The present terms and conditions are also applicable to all agreements with user, for the execution of which third parties have to become involved.
3. General terms and conditions of the buyer are only applicable if it is explicitly agreed upon in writing that these are, with the exclusion of these terms and conditions, applicable to the agreement. In that case any conflicting provisions in the general terms and conditions of user and buyer will only apply, if and insofar as they form part of the terms and conditions of user.
4. If one or more provisions in these terms and conditions are null and void or become voided, the remaining provisions of these general terms and conditions will continue to apply in full. User and buyer will have to consult with each other in order to agree on new provisions to replace the null and void or voided provision. In doing so, the purpose and meaning of the void or voided provision will be taken into account as much as possible.
5. If there is uncertainty regarding the interpretation of one or more provisions of these general terms and condition, then the interpretation must take place 'in the spirit' of these provisions.
6. If a situation occurs between parties which is not regulated in these general terms and conditions, then this situation must be assessed in the spirit of these general terms and conditions.
7. If user does not desire strict adherence to these terms and conditions, this does not mean that the provisions thereof are not applicable, or that user in any manner whatsoever would lose the right in other cases to desire the strict adherence to the provisions of these terms and conditions.

Article 3. Offers and tenders

1. All offers and tenders of user are without obligation, unless a period for acceptance is set out in the offer. An offer or tender lapses if the product to which the offer or the tender relates has become unavailable in the interim.
2. The offers made by user are without obligation; they are valid for fourteen days, unless stated otherwise. User is only bound to the offers if the acceptance thereof is confirmed in writing by the buyer within fourteen days.



3. If buyer provides data, drawings etc. to user, user may presume the correctness thereof and will base its offer thereon.
4. Delivery dates in offers of the user are indicative and upon delay in delivery do not give buyer the right to termination or compensation, unless explicitly agreed otherwise.
5. The prices in the offers and tenders mentioned are excluding VAT and other duties by authorities as well as dispatch and any transport and packaging costs, unless explicitly stated otherwise.
6. If the acceptance (on secondary points) derogates from the supply included in the offer, user will not be bound thereto. The agreement then does not come into effect in accordance with this derogating acceptance, unless user states otherwise.
7. A composite quote does not oblige user to deliver part of matters included in the tender or offer for a corresponding part of the price given.
8. Tenders and offers do not apply automatically to repeat orders.
9. Each tender is based on execution of the agreement by the user under normal circumstances and during normal working hours.

Article 4. Execution of the agreement

1. If the agreement is entered into in writing, this comes into effect on the day of signing of the agreement by the user, respectively on the day of sending of the written agreement by the user.
2. Contract extras include all that, by the user in consultation with the buyer, whether or not recorded in writing, during the execution of the recorded amounts in the agreement is delivered and/or presented as activities explicitly recorded in the agreement performed by him.
3. Verbal promises by and arrangements with user's employees do not bind the user unless and insofar as they are confirmed by him in writing.
4. User will execute the agreement to the best of his knowledge and abilities and in accordance with the requirements of good workmanship. All this on the basis of the known state of science.
5. User has the right to have some activities performed by third parties.
6. The buyer is responsible for all data of which user states that these are necessary or of which buyer reasonably ought to understand that these are necessary for the execution of the agreement, to be provided in time to user. If the data needed for the execution of the agreement is not provided in time to user, user has the right to suspend the execution of the agreement and/or to charge to the buyer the extra costs ensuing from the delay in accordance with the usual rates.
7. User is not liable for damage, of whatsoever nature, because user has used incorrect and/or incomplete data provided by buyer, unless this incorrectness or incompleteness ought to be apparent to user.
8. User is entitled to execute the agreement in different stages and to invoice the thus executed part separately.
9. If the agreement is executed in stages, user can suspend the execution of those parts that belong to a following stage until the other party has approved in writing the results of the stage preceding thereto.
10. If user or third parties engaged by user in the context of the order perform activities at the location of buyer or a location designated by buyer, buyer is responsible, free of charge, for the facilities reasonably desired by the employees.
11. Buyer indemnifies user for possible claims by third parties, who in connection with the execution of the agreement suffer damage which is attributable to buyer.

Article 5. Delivery

1. The delivery period starts on the last of the following dates.
 - a. the day of the coming into effect of the agreement;
 - b. the day of receipt by the user of the records, data, permits and such necessary for the execution of the agreement;
 - c. the day of compliance with the formalities necessary for the commencement of the activities;
 - d. the day of receipt by the user of that which in accordance with the agreement must be satisfied in advance payment prior to the commencement of the activities.
2. Delivery takes place from the warehouse of user.
3. If delivery takes place in the basis of "Incoterms", at the moment of the entering into the agreement, the applicable or most recent "Incoterms" will apply.
4. Buyer is obliged to take delivery of the matters at the moment that user delivers these to him, or has it delivered, or as the case may be at the moment at which these are made available to him in accordance with the agreement.
5. If buyer refuses to take delivery or is negligent in providing information or instructions that are necessary for the delivery, user is entitled to store the matters on the account and risk of buyer.
6. If the matters are delivered user is entitled to charge any delivery costs. These will in that case be invoiced separately.



7. If user requires data from the buyer in the context of execution of the agreement, the delivery date commences after buyer has made these available to user.
8. If user has given a certain term of delivery, this is indicative. A delivery date given is then also never a final deadline. Except for gross negligence on the part of the user, exceeding of the delivery date does not give buyer a right to wholly or partially terminate the agreement. Exceeding of the delivery date - through whatever cause - does not give the buyer a right to, without judicial authorisation, carry out activities or let activities be carried out in the execution of the agreement.
9. The delivery date is based on the applicable working conditions at the time of the entering into the agreement and on the timely delivery of the materials ordered by the user for the carrying out of activities. If through no fault of the user, delay occurs resulting from alteration of the working conditions mentioned or because materials ordered in time for the carrying out of the work are not delivered in time, the delivery date is extended insofar as necessary.
10. User is entitled to deliver the matters in parts, unless this has been derogated from in agreement or partial delivery has no independent value. User is entitled to invoice separately for the deliveries thus made.
11. If it has been agreed that the agreement will be executed in stages, user can suspend the execution of those parts that belong to a following stage until the other party has approved in writing the results of the stage preceding thereto.

Article 6. Samples and models

1. If a sample or model has been shown or provided to the buyer, then the presumption is that it was provided as indication without the matters having to conform thereto, unless it is explicitly agreed that the matter will correspond thereto.
2. In case of agreements with regard to immovable property, the record of the surface area or other measurements and specifications is also intended as indication only, without the matter having to conform thereto.
3. In catalogues, images, drawings, measurement and weight statements and such, the stated data are only binding if and in so far as these are explicitly included in a contract signed by parties or a confirmation of assignment signed by the user.

Article 7. Inspection, complaints

1. Buyer is bound to inspect (have inspected) the delivery at the moment of delivery (transfer), but in any event within 24 hours. Buyer has to thereby inspect if quality and quantity of the delivery corresponds to that which is agreed, or at least fulfil the requirements that apply thereto in the normal course of business.
2. Any visible defects or shortcomings must be notified in writing to user within three days from delivery. Non-visible defects or shortcomings must be notified in writing, stating reasons, within 7 days from delivery, in default thereof user is entitled not to deal with complaints in that respect. If buyer complains he must leave the goods in an unaltered state until user has been able to inspect the complaints.
3. If pursuant to the preceding subsection a complaint is made in time, buyer continues its obligation to take delivery and pay for the matters bought. If buyer wishes to return defective matters, then this takes place with prior written permission of the user in the manner as stated by user.
4. If buyer does not complain to user in writing within 7 days from delivery or delivery of goods, not covered under art. 7 subsection 1, he will be deemed to have accepted the goods.
5. If it is ascertained that a complaint is unfounded, then the costs arisen through this incurred by user, including the inspection costs, will be at the expense of the buyer in its entirety.

Article 8. Payments, price and costs

1. If user has agreed a fixed sale price with the buyer, the user is nevertheless entitled to increase the price in the events as stated hereinafter in this article.
2. User may, among other elements, pass on price increases, if between the times of offer and execution of the agreement significant price changes have occurred with regard to, for example, exchange rates, wages, raw materials, semi-finished products or packaging materials.
3. The prices applied by user are excluding VAT and any other duties, as well as any costs to be incurred in the context of the agreement, including dispatch and administration costs, unless stated otherwise.
4. The user is entitled to charge separately for the contract extras performed in the context of the agreement or written confirmation of assignment, as soon as the amount to be charged is known to him. For the calculation of contract extras the rules given in subsection 1, subsection 2 and subsection 3 of this article apply mutatis mutandis.



5. On goods that are returned by buyer, in the course of which user cannot reasonably be blamed, because buyer did not provide user with information, or with incorrect information or buyer has ordered incorrectly, 10% of the invoice amount and costs for transport are charged with a minimum of 25. - Euro. Returns consignments are in this case only accepted if the product is returned to ABF Bearings B.V. within 7 days of delivery, and only if the product and the original packaging are undamaged.

Article 9. Amendment of the agreement

1. If during the execution of the agreement it appears that it is necessary for a proper execution to amend the activities be performed and/or add to them, parties will in time and in mutual consultation adjust the agreement accordingly.
2. If parties agree that the agreement is amended and/or added to, the point in time of completion of the execution can be influenced by this. User will inform the buyer of this as soon as possible.
3. If the amendment and/or addition to the agreement have financial and/or qualitative consequences, user will inform buyer about this in advance.
4. If a fixed rate is agreed user will also state to what extent the amendment or addition to the agreement results in exceeding this fixed rate.
5. In derogation of this provision, user will not be able to charge extra contract costs if the amendment or addition is the result of circumstances which can be attributed to him.

Article 10. Payment

1. Payment must take place within the agreed payment term, in a manner to be stated by user in the currency in which it is invoiced. User is entitled to periodically invoice.
2. If buyer fails to pay within the agreed period, the buyer is legally in default. In that case buyer owes an interest equal to the statutory interest, increased by 3 percentage points. The interest over the amount due and payable will be calculated from the moment that buyer is in default to the moment of payment of the full amount.
3. In case of liquidation, insolvency, attachment or suspension of payments of the buyer, the claims of user on the buyer are immediately due and payable.
4. User has the right to apply the payments made by the buyer in the first place to reduce the costs, thereupon to reduce the interest arrears and finally to reduce the principal sum and the interest accrued.
5. User can, without thereby being in default, refuse an offer to pay, if the buyer designates a different sequence for the allocation. User can refuse payment of the principal sum in full, if the interest arrears and accrued as well as the costs are not also paid thereby.
6. Objections to the amount of the invoices do not suspend the payment obligation.
7. User has the option to account for a late payment surcharge of 2%. This surcharge is not owed in case of payment within 7 days from the invoice date.

Article 11. Retention of title

1. All matters delivered by user, including any designs, sketches, drawings, price overviews, films, software, (electronic) files etc. remain property of user until the buyer has fulfilled all following obligations under all agreements entered into with user.
2. Matters delivered by user, that pursuant to the provisions of 1. of this article subject to retention of title, may only be sold in the context of normal business operations and never be used as a means of payment. The buyer is not entitled to pledge the matters subject to retention of title, or to encumber them in any other way.
3. The buyer must always do all that can reasonably be expected of him to secure the ownership rights of user.
4. If third parties confiscate the delivered matters subject to title, or as the case may be want to vest rights thereto or have rights apply, buyer is obliged to inform user thereof as soon as can be reasonable expected.
5. The buyer is obliged to insure and keep insured the delivered matters subject to title against fire, explosions and water damage as well as theft and to give access to the policy of this insurance on first request. In case of any payment by the insurance, user is entitled to these monies. Insofar as is necessary buyer undertakes in advance to provide cooperation towards user in all that in that context is necessary or may (appear to) be necessary.
6. In the case that user wants to exercise his ownership rights specified in this article, the buyer already as of now gives unconditional and irrevocable permission to user or to third parties to be designated by user to enter all those places where the property of user are located and to take these matters back.



Article 12. Guarantee

1. User guarantees that the matters to be delivered fulfil the usual requirements and standards that can be set thereto and are free of defects that make application or use of the matters impossible.
2. The guarantee mentioned under 1. applies during a period of 3 months after delivery.
3. The buyer must notify the user of the defects within 14 days from having noticed these or reasonably ought to have noticed.
4. If the matters to be delivered do not fulfil these guarantees, user will either replace or return the purchasing costs, at the choice of user, within a reasonable period from receipt thereof, or if returning is not reasonably possible, receive written notification regarding the defect by buyer. In case of replacement, buyer hereby already binds himself to return the replaced matter to user and to transfer the ownership to user. If it appears that user is not able to deliver the matter to be replaced, the buyer cannot hold the user liable for any resulting damage in whatsoever form and can at most claim the purchasing costs from user.
5. The guarantee mentioned herein does not apply when the defect has arisen as a result of improper or spurious misuse or when, without written permission from user, buyer or third parties made alterations or as the case may be tried to make alterations to the matter or have used these for purposes for which the matter is not intended. Inspection of possible defects and the circumstances thereof will be conducted by experts appointed by user.
6. Failure to comply with one of obligations by buyer releases user from his obligations under this article.
7. If the guarantee provided by user concerns a matter which was produced by a third party, the guarantee is limited to that guarantee which is provided for this by the producer of the matter.

Article 13. Collection charges

1. If the other party is in default or in omission in the (timely) fulfilment of his obligations, then all reasonable costs incurred to obtain payment will be without the intervention of the courts at the expense of the other party. The extrajudicial costs will be calculated on the basis of what is currently used in the Dutch debt collection service; currently the calculation method in accordance with the Voorwerk II report.
2. However if user has incurred higher costs for collection than were reasonably necessary, the actual costs incurred will qualify for payment.
3. Any judicial and enforcement costs will also be recovered from the other party. The other party also will owe interest over the collection charges.

Article 14. Suspension and termination

1. User is entitled to suspend the fulfilment of the obligations or to terminate the agreement, if:
 - Buyer does not, or not fully, fulfil the obligations under the agreement.
 - After entering into the agreement user becomes aware of circumstances that give good grounds to fear that the buyer will not fulfil the obligations. In the event that there are good grounds that the buyer will only partially or improperly comply, the suspension is only permitted in so far as the shortcoming justifies it.
 - Buyer at entering into the agreement has been requested to provide security for the fulfilment of his obligations under the agreement and this security is not forthcoming or insufficient. As soon as security has been provided, the entitlement to suspend lapses, unless this satisfaction is unreasonably delayed by this.
2. Furthermore user is entitled to (have) the agreement terminated if circumstances occur which are of such a nature that the execution of the agreement becomes impossible or according to criteria of reasonableness and fairness can no longer be expected, or as the case may be if external circumstances occur of such a nature that unaltered maintenance of the agreement may not be expected in all reasonableness.
3. If the agreement is terminated the claims of user against buyer are immediately due and payable. If user suspends the fulfilment of the obligations, he retains his claims under the law and the agreement.
4. User always retains the right to claim compensation.

Article 15. Return of matters made available

1. If user, in the execution of the agreement, has made matters available to buyer, buyer is bound to return the matters thus delivered within 14 days in the original state, free of defects and complete. If the buyer does not fulfil this obligation all costs ensuing from this will be at his expense.
2. If buyer, for whatever reason, after a demand relating thereto, at a later date continues to be in default of the obligation mentioned under 1., user has the right to recover the damage and ensuing costs, including the costs of replacement, from buyer.



Article 16. Liability

1. The liability of the user is limited to fulfilment of the guarantee obligations described in article "Guarantees" in these terms and conditions.
2. Except for intent or gross negligence on the part of the user and except for the provisions of subsection 1 all liability of the user, such as for loss of profits, other indirect damage and damage resulting from liability towards third parties, is excluded.
3. The user is accordingly also not liable for:
 - infringement of patents, licences or other rights of third parties resulting from use of or due to data provided by buyer;
 - damage or loss, through whatever cause, of raw materials, semi-finished products, models, tolls and other matters made available by the buyer.
4. If the user, without receiving the order for installation, provides help or assistance -of whatever nature - at the installation, this takes place at the risk of the buyer.
5. The buyer is bound to indemnify, respectively reimburse, the user with respect to all liabilities of third parties for compensation for damage, for which the liability of the user is excluded in these terms and conditions in the relationship with the buyer.
6. If user is liable for direct damage, then this liability is limited to no more than the amount of the payment to be provided by the user's underwriter, or to no more than the net-invoice amount, or that part of the agreement to which the liability is related. A written refusal by the underwriter concerned regarding the claimed damage constitutes complete evidence.
7. Fulfilment of the applicable guarantee/complaint obligations and/or payment of the recorded damage by user and/or the underwriter(s) of user are deemed to be sole and full compensation. For the remainder, buyer explicitly and fully indemnifiesthe user.

Article 17. Risk transfer

1. The risk of loss of or damage to the products that are subject of the agreement transfers to buyer at the time at which these are legally and/or factually delivered to buyer and therewith are brought into the control of buyer or of third parties to be appointed by buyer.

Article 18. Force majeure

1. Parties are not bound to the fulfilment of any obligation, if they are prevented thereto as a result of circumstances not attributable to negligence, and neither according to the law, a legal act or according to generally accepted standards are on their account.
2. Force majeure in these general terms and conditions includes in addition to that which has been defined in the law and jurisprudence, all external causes, foreseen or unforeseen, on which user cannot exercise influence, but through which user is unable to fulfil his obligations. Industrial actions in the company of use are included in this. User also has the right to invoke force majeure, if the circumstances that prevent (further) fulfilment, occurs after user ought to have fulfilled his obligation.
3. Parties can during the period the force majeure continues, suspend the obligations under the agreement. If this period lasts longer than two months, each of the parties is entitled to terminate the agreement, without obligation to compensation of damage to the other party.
4. For as much as user at the time of the occurrence of force majeure has meanwhile fulfilled partially his obligations under the agreement or could fulfil these, and an independent value is attached to the fulfilled, respectively to be fulfilled, part, the user is entitled to separately invoice for the already fulfilled respectively to be fulfilled part. Buyer is bound to satisfy this invoice as if it was a separate agreement.

Article 19. Indemnities

1. Buyer indemnifies user for possible claims by third parties, who in connection with the execution of the agreement suffer damage and of which the cause is attributable to another than to buyer.
2. If for that reason a claim is made by third parties against user, then buyer is bound to assist user at law and otherwise and promptly do all that may be expected of him in that case. If the buyer continues to be in default in taking adequate measures, then user is, without notice of default, entitled to proceed thereto himself. All costs and damage on the part of user and third parties arisen through this are fully on the account and risk of the buyer.

Article 20. Intellectual property and copyright

1. Without prejudice to the other provisions of these general terms and conditions user retains the rights and entitlements which are vested in user on the basis of the Copyright Act.
2. Buyer is not permitted to make changes to the matters, unless from the nature of the delivery follows otherwise or is otherwise agreed upon in writing.



3. Any, in the context of this agreement, by user effected designs, sketches, drawings, films, software and other materials or (electronic) files, remain the property of user, regardless of whether these are made available to buyer or to third parties, unless otherwise agreed upon.
4. All documents provided by user, such as designs, sketches, drawings, films, software, (electronic) files etc., are exclusively intended to be used by buyer and may not without prior permission from user be reproduced by him, published or made known to third parties, unless from the nature of the documents provided it follows otherwise.
5. User retains the right to use the knowledge acquired by the carrying out of the activities for different purposes, insofar as no confidential information is made known to third parties hereby.
6. The offer made by the user, as well as the drawings, calculations, software, descriptions, models, tools and such produced or provided by him, remain his property, regardless of whether costs have been charged for this. The information, that in all this is contained or is at the basis of the manufacturing and construction methods, products and such, remains exclusively reserved for the user, even if costs have been charged for this. The buyer warrants that the information referred to, except for the execution of the agreement, will not be copied, shown to third parties, made known or used other than with the written permission of the user.

Article 21. Non-disclosure

1. Both parties are bound by confidentiality of all confidential information that they, in the context of their agreement, acquire from each other or from another source. Information is considered confidential if this has been stated by a party, or if this follows from the nature of the information.
2. If, on the basis of a statutory provision or a judicial decision, user is bound to provide confidential information to third parties appointed by the law or the competent court, and user cannot in that respect rely on a legal or a right permitted by the competent court to refuse to give evidence, then user is not bound to compensation or reimbursement and the other party is not entitled to termination of the agreement on the basis of any damage arisen hereby.

Article 22. Non-takeover staff

1. The buyer will, in no manner, except for after proper business-like consultation with user has taken place in this respect, take into employment or otherwise, directly or indirectly have work for them, employees of user or of companies user has relied on for the execution of this agreement and that are (or have been) involved in the execution of the agreement during the term of the agreement as well as one year after termination thereof.

Article 23. Disputes

1. Parties will only appeal to the court after they have fully endeavoured to settle a dispute through mutual consultation.

Article 24. Applicable law

1. Dutch law is exclusively applicable to all legal relationships to which user is party, also if an obligation is wholly or in part fulfilled abroad or if the party involved in the legal relationship has its residence abroad. The applicability of the Vienna Sales Convention is excluded. If "Incoterms" are applicable to the agreement between buyer and user, the present general terms and conditions take precedence over the "Incoterms".

Article 25. Location and amendment terms and conditions

1. These term and conditions are filed at the Chamber of Commerce office in Breda.
2. In the event of interpretation of the content and meaning of these general terms and conditions, the Dutch texts thereof always prevails.
3. The latest filed version or the version as it applied at the time of the coming into effect of the agreement is always applicable.