

General Terms and Conditions of Sale and Delivery of 4BLUE BV

GENERAL

Article 1 - Applicability and definitions

1. These General Terms and Conditions apply to all offers of 4BLUE BV (hereinafter referred to as "4BLUE") and all agreements. In particular, they apply to all sales and deliveries of 4BLUE goods. These conditions also apply to all services, including advice and information provided.
2. In these General Terms and Conditions, the following terms have the following meanings:- Other party: the natural or legal person who receives offers in accordance with paragraph 1 of 4BLUE or concludes agreements with 4BLUE.
3. 4BLUE strives to hand over these General Terms and Conditions to the Other Party before or at the conclusion of agreements with 4BLUE. However, if handover has not taken place or is not reasonably possible, the Other Party can enquire with 4BLUE. At the request of the other party, the General Terms and Conditions will be submitted free of charge.
4. If one or more provisions of these General Terms and Conditions proves to be invalid or be annulled, this will not affect the legal force of the remaining provisions.
5. The address provided by the Other Party before or upon concluding the agreement may be used by 4BLUE as such for making statements and/or notifications to the Other Party, until the latter notifies 4BLUE in writing of its new address.

Article 2 - General terms and conditions of the Other Party and deviating agreements

1. Conditions relating to the delivery, payment and purchase of the Other Part do not apply to the offers of 4BLUE and agreements concluded with 4BLUE.
2. Agreements between the Other Party and 4BLUE that deviate from the present General Terms and Conditions only apply if these agreements have been explicitly confirmed in writing by 4BLUE.

SALES AND DELIVERY CONDITIONS

Article 3 - Offers, agreements, and prices

1. All offers from 4BLUE are without obligation.
2. The information and appendices provided by 4BLUE with the offer are informative and only provide a general representation.
3. If a sample or model is shown or provided to the Other Party before or with the offer, this will only be done for indicative purposes, without the item having to correspond.
4. 4BLUE reserves all intellectual and industrial property rights to the designs, drawings, images, diagrams, lists of materials, software and other documentation provided with the offer. All said items and other documentation remain the property of 4BLUE and may not be copied, whether in whole or in part, shown or handed over to any third party, nor used in any other way in dealings with third parties without the express written permission of 4BLUE.
5. Agreements between 4BLUE and the Other Party are concluded after 4BLUE has confirmed the order of the Other Party in writing. 4BLUE is entitled to refuse orders or to attach special conditions to the delivery.
6. Cancellation or amendment of the agreement is only possible after written consent from 4BLUE.
7. In the event of cancellation or change of the order after conclusion of an agreement between 4BLUE and the other party, the Other Party owes the cancellation costs to be determined by 4BLUE. These cancellation costs consist of all costs reasonably incurred by 4BLUE with a view to the execution of the agreement, loss of profit and other damage.
8. Cancellation or changes to the agreement will not be accepted in the period of two (2) working days prior to the delivery date. In that case, the total invoice amount will always be due.
9. To produce an offer, 4BLUE must usually incur costs for researching information, consultation, design, engineering, advice and the like. If 4BLUE's offer does not lead to an agreement and 4BLUE has spent over ten (10) hours on the aforementioned activities, 4BLUE will charge the Other Party for such activities, and the Other Party is obliged to pay the corresponding invoice to 4BLUE.
10. The valid prices on the day of delivery will be charged. If, after the offer or the conclusion of the agreement, one or more cost factors underlying 4BLUE's prices change for any reason whatsoever, 4BLUE shall be entitled to increase the offered or agreed prices accordingly, without this entitling the Other Party to a full or partial dissolution of the agreement.
11. The stated prices apply ex works, Incoterms 2010 and exclusive of packaging, unless stated otherwise in the offer.
12. All prices are always exclusive of VAT, unless stated otherwise in the offer.

Article 4 - Delivery time, delivery and risk

1. The stated delivery times are an indication and may never be regarded as a deadline, unless explicitly agreed otherwise.
2. Except in case of intent or gross negligence by 4BLUE, the other party cannot claim compensation and/or dissolution of the agreement if the delivery time is exceeded for up to 60 days. If the delivery time is exceeded by more than 60 days, the other party must give 4BLUE written notice of default. In this notice of default, the other party must give 4BLUE a reasonable period for compliance.
3. The delivery time starts on the day on which the agreement has been concluded, but no earlier than after the other party has complied with all possible details related to the implementation of the agreement, which must first be realized by the other party.
4. 4BLUE is authorized to perform in parts. Orders or parts thereof, which cannot be delivered immediately, are noted for subsequent delivery; the other party will be informed of this in writing by 4BLUE. Partial deliveries can be invoiced separately by 4BLUE to the other party.
5. The risk of damage, destruction or loss of the goods to be delivered transfers to the other party as soon as these goods are sent by 4BLUE, even if free delivery has been agreed.
6. The other party is obliged to take delivery of the goods at the moment that 4BLUE delivers them or has them delivered to the other party, or at the time that the goods are made available to the other party. If the other party refuses to take delivery, or is negligent in providing information or instructions that are necessary for the delivery, 4BLUE is entitled to store the goods at the expense and risk of the other party or to dissolve the agreement, or the unexecuted part thereof, without judicial intervention and without requiring notice of default, all this without prejudice to 4BLUE's right to compensation.
7. All deliveries are ex works, Incoterms 2010.
8. The other party guarantees good accessibility of the delivery address. Any restrictions for delivery to the delivery address must be indicated in advance by the other party. For example weight restrictions, mandatory delivery by ferry, narrow street where normal transport is not possible, etc. If this provision is not complied with, the costs for the performance of (additional) work in order to be able to proceed with delivery are at the expense of the other party, unless otherwise agreed in writing.
9. Additional costs may be charged by 4BLUE for deliveries abroad and to the Wadden Islands.

Article 5 - Force majeure

1. A shortcoming in the fulfillment of the agreement by 4BLUE cannot be attributed to 4BLUE, among other things, if the causes of this shortcoming are beyond their control or fall outside the scope of 4BLUE. Causes as referred to in the previous sentence include war, danger of war, civil war, riot, molestation, fire, water damage, flooding, strike, occupation, exclusion, import and export barriers, government measures, defects to machines, disruptions in the supply of gas, water and electricity and the stagnation or interruption of deliveries from third parties from whom 4BLUE must obtain raw materials, materials or parts for the execution of the agreement.
2. In the event of a non-attributable shortcoming in the fulfillment of the agreement by the other party, 4BLUE is authorized to dissolve the agreement in whole or in part.

Article 6 - Exclusion and limitation of liability

1. For all direct damage of the other party caused by a failure attributable to 4BLUE in the fulfillment of the agreement, the liability of 4BLUE is limited to the agreed price, except in case of intent or gross negligence.
2. 4BLUE is not liable for all indirect damage or consequential damage, including stagnation in the regular course of affairs in the business of the other party and/or stagnation in the performance of one or more assignments carried out by the other party on behalf of third parties, except in case of intent or gross negligence.
3. 4BLUE excludes any liability for damage caused by the actions of auxiliary persons or as a result of errors in drawings and/or technical data which 4BLUE uses on its own initiative or by designation or instructions of the other party in the implementation of the agreement.
4. 4BLUE excludes any liability for damage that has arisen during the execution of the agreement as a result of used items that have been made available by 4BLUE itself, by third parties or by the other party and which appear to be unsuitable for the execution of the agreement.

4BLUE BV

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5. All goods, such as materials, semi-finished products and machines, which are made available by the other party for the performance of the agreement, will not be insured by 4BLUE. The other party is obliged to insure these items themselves and to keep them insured for the duration that they are covered by 4BLUE.
6. The items referred to in paragraph 5 remain at the risk of the other party. The other party is liable to 4BLUE for all damage caused by (the use of) these items.

Article 7 - Guarantee

1. Without prejudice to the provisions of Article 8 (Reclamation) and unless otherwise stated in the offer, only the warranty provisions set by this supplier apply to goods sold and delivered with a factory or importer or wholesale guarantee.
2. For all matters for which there is no special guarantee as stated in paragraph 1, the other party must submit a complaint to 4BLUE on the basis of Article 8.

Article 8 - Reclamation

1. The other party has the express duty to investigate immediately upon delivery and if this is not possible no later than 48 hours after delivery of the goods whether the goods delivered comply with the agreement.
2. The other party must notify 4BLUE in writing immediately after discovery, but no later than 48 hours after delivery, of any shortcomings on the part of 4BLUE, in the absence of which the other party can no longer appeal to 4BLUE that the goods delivered do not comply with the agreement.
3. The other party is not free to return the goods before 4BLUE has agreed to this in writing. Return shipments must be made with reference to the packing slip or invoice number: in the absence of this being stated, the administration costs that 4BLUE must incur will be charged to the other party. Acceptance of return shipments may never be regarded by the other party as acknowledgment by 4BLUE of defects in the delivered goods, or as an acknowledgment of liability. The costs of returning are for the other party and the goods remain their risk until the moment that 4BLUE has received them.

Article 9 - Payment conditions

1. Payment for the goods delivered by 4BLUE must be made prior to delivery, unless otherwise agreed in writing. 4BLUE is entitled to demand immediate payment. Then a part of the invoice to be determined by 4BLUE is due before 4BLUE proceeds to delivery.
2. 4BLUE is entitled to invoice partial deliveries separately.
3. The other party cannot rely on setoff against 4BLUE.
4. After the expiry of the period referred to in paragraph 1, the invoice amount is immediately due and payable. The other party will then legally be in default without a notice of default being required.
5. After the expiry of the period referred to in paragraph 1, 4BLUE is entitled to charge interest on the unpaid amount of 1.5% per month from the day on which the other party is in default until the day of full payment.
6. Payments made by the other party always serve to settle all costs owed, then the interest and then the due and payable invoices that have been outstanding the longest, even if the other party states that the payment relates to a later invoice.
7. If the other party has failed to fulfil its payment obligations in time, as described in paragraph 1, the other party is obliged to bear and pay in full all extrajudicial costs, legal costs and costs for legal assistance incurred by 4BLUE. These costs also include other and/or higher costs than the legal costs to be estimated by law. Furthermore, these costs also include the costs for a possible collection. These are 15% by default. In the event that 4BLUE files for bankruptcy of the other party, the other party will also be obliged to pay the costs of the bankruptcy application in addition to the costs mentioned above.
8. Without prejudice to the provisions of paragraph 3, in the event of bankruptcy (s), (application for) suspension of payment, closure or liquidation of the business of the other party or the other party is placed in receivership without a notice of default being required by operation of law. The previous sentence applies mutatis mutandis if the other party does not, not correctly or not timely fulfil its obligations under the agreements concluded with 4BLUE.
9. In the cases referred to in the previous paragraph, 4BLUE has the right to either suspend the execution of the agreement, or to dissolve the agreement in whole or in part by means of a written statement, without judicial intervention, without prejudice to 4BLUE's right to claim full compensation.

Article 10 - Security

1. If 4BLUE has good reason to fear that the other party will not fulfil its obligations under the agreement, 4BLUE shall be entitled, before or during the execution of the agreement, to suspend the fulfilment of the obligations until the other party, at the request and to the satisfaction of 4BLUE, has provided security for the fulfilment of all its obligations under the agreement. This provision applies equally if credit is stipulated.

2. After the term set by 4BLUE as security has expired, the other party will be in default by operation of law and 4BLUE may dissolve the agreement without judicial intervention by means of a written statement, without prejudice to 4BLUE's right to full compensation.

Article 11 - Retention of title

1. The goods delivered by 4BLUE shall remain its property until the other party has fulfilled all the following obligations under all agreements concluded with 4BLUE: - the consideration(s) with regard to goods delivered or to be delivered; - the consideration(s) with regard to services performed or to be performed by 4BLUE by virtue of the agreement: - the possible claims for non-fulfilment by the other party of (an) agreement(s) concluded with 4BLUE.
2. The goods delivered by 4BLUE in accordance with section 1 fall under the reservation of property and may only be resold within the context of normal company operations. The other party is not authorized to pledge any further goods or to establish any other right on them.
3. 4BLUE hereby reserves the rights of pledge as referred to in the Dutch Civil Code on goods that have passed into the possession of the other party with due observance of the provisions of paragraph 1 and that are still under the possession of the other party, as security for claims that 4BLUE may have on or receive from the other party for whatever reason. This reservation of rights of pledge shall also apply to goods delivered by 4BLUE that have been processed or treated by the other party and which would cause 4BLUE's retention of title to lapse.
4. If the other party fails to meet its obligations or if there is a well-founded fear that it will not meet its obligations, 4BLUE shall be entitled to remove the delivered goods to which the retention of title referred to in paragraph 1 applies from the other party or to third parties holding these goods for the other party (or have them removed). The other party is obliged to cooperate fully to this end under penalty of an immediately payable fine of 10% per day of all that it owes to 4BLUE.
5. If third parties wish to establish or claim any right to the goods delivered under retention of title, the other party is obliged to immediately inform 4BLUE in writing.
6. The other party undertakes: To insure the goods delivered under retention of title and to keep these goods insured against fire, explosion and water damage and against theft and to make the policy of this insurance available to 4BLUE for inspection; to pledge to 4BLUE at the first request of 4BLUE all claims of the other party against insurers relating to the goods delivered under retention of title as referred to in the Dutch Civil Code; to pledge to 4BLUE at the first request of 4BLUE the claims the other party obtains against its customers when reselling goods delivered under retention of title by 4BLUE as referred to in article 3: 239 BW; to mark the goods delivered under retention of title as the property of 4BLUE;

Article 12 – Disputes and Governing law

1. All offers and agreements by 4BLUE are governed by Dutch law.
2. In terms of disputes that may arise between 4BLUE and the other party, the district court in Arnhem shall have exclusive jurisdiction to hear disputes, with the exception of disputes where the sub district court has exclusive jurisdiction.

Wijchen, 01 April 2020

4BLUE BV