

General Terms and Conditions BigAirBag B.V.

General terms and conditions about offers, sale, lease, rental, use and delivery of the products of BigAirBag B.V., with statutory seat in Amsterdam, the Netherlands, registered at the trade register with the Chamber of Commerce of the Netherlands under number 62902644 (hereinafter: "BigAirBag").

1. Applicability and Language

1.1 These general terms and conditions apply to all offers, orders and/or agreements between BigAirBag and customers in relation to the sale, lease, rental, use and delivery and/or the granting of a right to use the products of BigAirBag. The applicability of any general terms and conditions which may be used by the customer is explicitly excluded, and such general terms and conditions will in no event bind BigAirBag, unless BigAirBag has explicitly accepted these general terms and conditions of the customer in writing.

1.2 In the event the customer has entered into an agreement with BigAirBag under these terms and conditions once, the customer is deemed to tacitly agree with the applicability of these general terms and conditions to any and all repeating offers and/or orders and/or to any future agreements to be entered into with BigAirBag.

1.3 BigAirBag is entitled to unilaterally change these general terms and conditions at any time.

2. The offer

2.1 Customers may request an offer by email, fax, telephone or by filling in the quotation form on the BigAirBag website. A request for an offer is no legal offer but – as the last sentence implies – a request for an offer.

2.2 On the basis of the request for an offer, BigAirBag will propose to the customer a written offer.

2.3 BigAirBag is entitled to reject a request for an offer without stating the reason at any time;

3. Agreement

3.1 An agreement will be entered into as soon as the customer accepts BigAirBag's offer in writing and expressed conditions are met.

3.2 BigAirBag and the customer can enter into an agreement for a certain period of time. Such an agreement will be entered into for the period of time as referred to in that agreement. The agreement may be terminated in writing in accordance with the provisions of the agreement, as follows:

a. by either party at the end of the initial contract period by giving one (1) month's written notice;

b. by either party at any time after completion of the initial contract period by giving three (3) month's written notice;

3.3 BigAirBag and/or the customer furthermore are entitled to terminate an agreement with immediate effect and without judicial intervention being required, in the event that:

a. the other party fails to perform or breaches any obligations, guarantee, duty or responsibility to the other and does not fully remedy such failure, breach or default within thirty (30) days of having been given written notice;

b. the other party files a petition in bankruptcy; files a petition seeking any reorganisation,

arrangement, composition or similar relief under any law regarding insolvency or relief for debtors; or makes an assignment for the benefit of its creditors;

c. a receiver, trustee or similar officer is appointed for the business or property of the other party;

d. any involuntary petition or proceeding under bankruptcy or insolvency laws is instituted against the other party and not stayed, enjoined, or discharged within sixty (60) days;

e. the customer adopts a resolution for, or undertakes to effect, a discontinuance of its business (or a substantial part thereof) or dissolution;

f. the customer is subject to a change of control whether directly or indirectly.

3.4 Upon termination or expiration of any agreement:

a. the customer shall pay any amounts due within thirty (30) days following the date of expiry or termination of the Agreement; and

b. all products and/or documentation delivered to the customer under the agreement shall be returned to BigAirBag within thirty (30) days following the date of expiry or termination of the agreement.

4. Performance

4.1 BigAirBag shall to its best knowledge and ability perform its obligations under any agreement.

4.2 BigAirBag shall agree to all the delivery terms to the best of its knowledge and comply with these terms as much as possible. As soon as BigAirBag becomes aware of any circumstance that may prevent the timely delivery of products, BigAirBag will consult with the customer. The customer is under no circumstances entitled to any compensation or other relief in relation to late delivery. BigAirBag is at all times entitled to make partial deliveries (if possible).

4.3 In the case of an order for a BigAirBag, it is the customer's responsibility to provide accurate measurements to BigAirBag. Please note that these measurements are unrelated to the pit's dimensions. In the event of any uncertainties, we strongly advise arranging an onsite measurement by a BigAirBag technician as a proactive step.

4.4 It should be acknowledged that air pressure functions in all conceivable directions, rendering angular airbag structures a combination of round base-elements. Pressurized AirBags inherently possess slightly larger dimensions than their low-pressure counterparts, and they necessitate minimal space within a pit for their proper functionality. The permissible deviation in the dimensions of AirPits lies within the range of -10cm (-4 inches) to +10cm (+4 inches) on all sides. Any concerns stemming from this discrepancy can be effectively mitigated through the incorporation of a skirt system or Foam Topper.

5. Prices and Payment

5.1 Unless indicated otherwise, all prices are exclusive of value-added tax (VAT).

5.2 The customer must pay BigAirBag the amounts due within thirty (30) days following the date of the invoice from BigAirBag.

5.3 In the event of sale the customer must pay an initial deposit of 25 % of the purchase price. Upon receipt of the initial payment BigAirBag shall start production. Upon completion of the production the remaining amount of 75 % of the price has to be paid by the customer. Upon receipt of complete payment of the price BigAirBag shall release the shipment.

5.4 Notwithstanding the provisions of article 5.3 the customer must pay an initial deposit of 50 % of the purchase price, in the event the latter orders products with custom measurements.

5.5 In the event the customer, whether wholly or in part, fails to meet his payment obligations, or fails to meet his payment obligations on time, the customer is in default without any further notice being required. Once in default, the customer must pay interest of 1.5 % per month or part thereof, commencing on the date payment was due. All costs, including reasonable attorney fees, incurred by BigAirBag, either through the courts or otherwise, as a result of the customer not meeting his obligations under an agreement will be at the expense of the customer. The extrajudicial (collection) costs incurred by BigAirBag will be set at a minimum of 15 % of the principal amount of the claim.

5.6 Failure to execute full and/or on-time payment by the customer shall entitle BigAirBag to withhold or postpone any delivery of products or other obligations to the customer until any amounts due are fully paid by the customer and received by BigAirBag.

5.7 BigAirBag charges a fixed €200 storage cost per pallet spot, per week starting from 14 days after completion of the production.

5.8 Payment by the customer shall be made in a legal Dutch tender, without the right to invoke any rights to set-off, withhold or postpone on account of an attributable failure of BigAirBag, whether alleged or not, in the performance of its obligations under the agreement.

5.9 In the event of increased costs due to external factors such as customs duties, transportation fees, or other unforeseen circumstances, BigAirBag reserves the right to adjust the agreed prices accordingly. BigAirBag will inform the client of such changes as soon as reasonably possible.

6. Transport and risk

6.1 Unless otherwise agreed in writing, BigAirBag shall deliver ex works (EXW INCOTERMS ICC edition 2010).

7. Force Majeure

7.1 Neither party is obliged to comply with a contractual obligation resulting from an agreement, with the exception of any and all payment obligations, and neither party as such shall be liable to the other party for any delay or non-performance of its obligations under an agreement, in the event of, and to the extent such delay or non-performance is due to, Force Majeure. Force Majeure are events beyond the reasonable control of a party, which occur after the date of signing of the Agreement, which were not reasonably foreseeable at the time of signing of the Agreement and whose effects are not capable of being overcome without unreasonable expense and/or loss of time to the party concerned. Events of Force Majeure shall include, but are not limited to, war, acts of government, natural disasters, fire, explosions and labor disputes.

7.2 If an event Force Majeure results in delay or non-performance of a party for a period of 3 months or longer, then the other party shall have the right to terminate the agreement forthwith and without liability towards the other party.

8. Warranty

8.1 Subject to the following provisions, BigAirBag solely warrants that products delivered pursuant to an agreement shall comply with all properties and characteristics expressly agreed in writing or to be expected pursuant to the legal provisions at the time when risk passes to the customer. BigAirBag does not undertake any warranty in respect of defects caused by improper handling, wear and tear, storage or other acts or omissions of the customer or of third parties.

8.2 Warranties should be invoked by returning the product to BigAirBag no later than one (1) year after the date of shipping (carry-in warranty).

8.3 Expenses and/or any damage, occurred by or related to returning the products as stipulated in article 8.2, including loss of profits, will be for the account of the customer.

8.4 The fulfilment of any warranty obligations of BigAirBag shall be dependent on the customer fully fulfilling any and all of its contractual obligations, in particular its payment obligations as agreed.

9. Liability

9.1 Clients must use BigAirBag products only as described in the latest product manual provided by BigAirBag. Any misuse or deviation will release BigAirBag from all responsibility and liability.

9.2 BigAirBag products are subject to normal wear and tear. Clients must ensure periodic inspections, maintenance, and timely replacement if needed. An annual inspection must be performed by the manufacturer or a qualified expert.

9.3 Clients are responsible for complying with local laws, regulations, and industry standards relevant to their use of BigAirBag products, including selecting the correct model and size.

9.4 Under no circumstances will BigAirBag be liable for damages and any costs incurred, suffered by the customer or any third party, except in cases of willful conduct or gross negligence.

9.5 Any liability for BigAirBag, insofar as this is covered by its liability insurance, is limited to the amount paid out by the insurer.

9.6 If BigAirBag's liability insurer does not make payment or if damage is not covered under the insurance, BigAirBag's liability will be limited to the invoice value of the agreement concerned.

9.7 BigAirBag is under no circumstances liable for consequential damage, whether damage for loss of profits or any other indirect damages.

9.8 The customer indemnifies BigAirBag against any third-party claims for damages in relation to the sale, lease, rental, use, and delivery of BigAirBag's products and/or the granting of a right to use the products of BigAirBag, if and insofar these damages are not for BigAirBag's account and risk pursuant to these general terms and conditions.

9.9 BigAirBag provides power and pressure failure alarms to enhance airbag safety. These alarms do not replace your responsibility to ensure proper inflation through visual and physical inspections, as outlined in the user manual. We strongly advise airbag owners to test their alarms daily and integrate this into their inspection logbook.

10. Intellectual Property Rights

10.1 Under no circumstances will an agreement between BigAirBag and the customer be construed to be a transfer by BigAirBag of its intellectual and/or industrial property rights (hereinafter: "IP rights") or any right of license in relation thereto, to the customer.

10.2 The customer acknowledges that all IP rights in relation to the products and information of BigAirBag are exclusively vested in BigAirBag. Nothing in the agreement between BigAirBag and the customer shall be construed as limiting BigAirBag's rights to use its IP rights, whether or not acquired before, under or after any agreement with the customer.

10.3 BigAirBag is exclusively entitled to register or record possible IP rights in relation to the products and information made available by BigAirBag to the customer. Furthermore, the customer shall not derive any rights of prior use vis-à-vis BigAirBag due to having knowledge of such possible IP rights or such information.

10.4 The customer undertakes never to challenge or assist third parties in challenging the IP rights of BigAirBag or the validity thereof. Furthermore, the customer undertakes not to design, manufacture, import, distribute, promote or sell products when this (possibly) infringes the IP rights of BigAirBag.

10.5 The customer will promptly inform BigAirBag of any possible infringement on the IP rights of BigAirBag that comes to its attention.

10.6 If a certain design (such as, but not limited to, prints/motifs, text personalization or images) is printed on the products of BigAirBag at the request of the customer, or if the customer otherwise influences the products of BigAirBag, the customer guarantees BigAirBag that this does not infringe an IP right of a third party. The customer fully indemnifies BigAirBag against third-party claims based on BigAirBag's use of the design (as aforementioned), or claims that are otherwise in connection with the customer's request as mentioned above, and hereby undertakes to fully indemnify and hold harmless BigAirBag on a euro-for-euro basis for all damage suffered or incurred by BigAirBag, liabilities (including fines and penalty payments), costs and/or expenses.

10.7 The customer expressly authorizes BigAirBag to use visual material (such as, but not limited to, images and videos) of BigAirBag's products covered by the agreement between BigAirBag and the customer (i.e., even if logos of the customer are visible). This applies both if the visual material was created by or on behalf of BigAirBag, as well as if the visual material was created or used by or on behalf of the customer, or is otherwise from the customer. The customer guarantees BigAirBag that it is qualified to grant this permission and that this does not infringe any IP rights of a third party. The customer indemnifies BigAirBag against third-party claims based on BigAirBag's use of the imagery in accordance with the indemnification referred to in Article 10.6.

11. Non-competition

11.1 During the term of the agreement between BigAirBag and the customer and during one year after the termination or expiration thereof, the customer undertakes that it will not engage directly or indirectly in any part of the world in the manufacturing, importation, distribution, promotion or sale (either on its own account or for or on behalf of any other party) of products which are identical or similar to the products and/or designs of BigAirBag to third parties without the prior written consent of BigAirBag.

12. Applicable Law and Competent Jurisdiction

12.1 All offers, orders and/or agreements between BigAirBag and the customer, including these general terms and conditions and all activity related thereto, shall be exclusively governed by and construed in accordance with the laws of The Netherlands.

12.2 Any dispute arising out of or in connection with any offer, order and/or agreement between BigAirBag and the customer, shall be settled exclusively by the competent court in Amsterdam (the Netherlands), to whose exclusive jurisdiction the parties hereby irrevocably submit.

13. Miscellaneous

13.1 If any provision of a contract or of these General Terms and Conditions should be unenforceable in whole or in part, the remaining provisions shall remain in force. In case of (such) partial unenforceability, the contracting parties undertake to replace the unenforceable provisions with enforceable provisions that reflect the intention of the unenforceable provisions as closely as possible.