

1. Application of General Terms & Conditions

1.1. All present and future legal relations between “BANDL BV”, with registered office at 2711 4872 LA Etten-Leur, Bredaseweg 185 kvk65308115, (hereinafter referred to as “Bandl”) and the customer, are governed by (in hierarchically decreasing order):

- (i) The specific written agreement between Bandl and the customer;
- (ii) The written order confirmation sheet (“OCS”);
- (iii) The written framework agreement between Bandl and the customer;
- (iv) These general terms & conditions;
- (v) Dutch law.

1.2. By its price inquiry, by placing an order or by concluding an agreement, the customer acknowledges having taken cognizance of these general terms & conditions and agrees that they shall apply to all present and future legal relations between Bandl and the customer.

1.3. These general terms & conditions shall always prevail over the customer’s terms and conditions, which are not enforceable against Bandl, even where they stipulate that they are the only conditions that apply.

1.4. Any derogation from these general terms & conditions must be agreed in a written agreement between the parties; it shall solely apply to the specifically agreed case, and shall on no account be regarded as a precedent.

1.5. Any invalidity of all or part of one or more provisions of these terms & conditions shall not affect the validity and applicability of the other clauses and/or the rest of the provision in question. Where one or more provisions of these general terms & conditions are invalid, Bandl and the customer will negotiate to replace the invalid clause(s) with an equivalent provision in the spirit of these general terms & conditions.

1.6. To the extent that reference is made in these terms or the agreement to an internationally defined term (for example, but not limited to EXW, CIF, DDP, FOB, etc), such term shall have the meaning to be attributed to it under the terms of the Commerce Published Incoterms 2020

2. Quotations

2.1. All (oral or written) quotations, price lists, catalogues and references on the website of Bandl are free of engagement and are simply to be regarded as an invitation to the customer to place an order, unless expressly stated otherwise.

Bandl may withdraw all quotations at any time. In all cases, unless specified otherwise in the quotation, quotations are only valid for 30 calendar days.

Any changes to a quotation render the previous quotation null and void.

2.2. The price, description, properties, technical specifications and representation (drawings and pictures) of the goods mentioned in the quotation, price list, catalogues or on the website are for information only and not binding on Bandl.

2.3. All prices are subject to exchange rate increases. Bandl reserves the right to pass on to the customer exchange rate increases by more than 3%, taking place between the quotation and the conclusion of the contract.

2.4. A quotation is only valid for a particular order and shall not apply to subsequent orders or repeat orders.

3. Establishment of the contract

3.1. A contract between Bandl and the customer is established when the customer signs a written order confirmation (hereinafter referred to as “Order Confirmation Sheet” or “OCS”) issued by Bandl, or if the customer fails to respond to this OCS within ten calendar days. A contract is also established when Bandl starts executing the order.

3.2. In the event of a long-term collaboration between Bandl and the customer, a framework agreement may be signed, setting out the general arrangements between Bandl and the customer.

Each individual purchase order under such framework agreement shall be covered by a separate OCS in which the special terms and conditions of the individual purchase order are agreed.

3.3. If negotiations fall through before a contract is established, or if a contract is cancelled or terminated by or for the account of the customer, even partially, Bandl reserves the right to charge the customer for the goods already delivered and for the work already done, as well as all expenses already incurred, plus a fixed indemnity of 10% of the price (excl. VAT) of the contract in question, with a minimum of €250.00 and without prejudice to Bandl’s entitlement to compensation for greater proven loss.

4. Performance of the contract

4.1. Bandl shall only be bound by the following specific requirements and specifications imposed by the customer, on condition that they are expressly stipulated in the OCS:

- (i) All the customer’s specific requirements regarding properties, capacities, functionalities, applications, expected performance, themes etc. which the goods supplied by Bandl and their packaging must meet. This also applies to the specific requirements of the goods and their packaging as regards food safety;
- (ii) All specifications relating to the intended use of the goods – target group, country of destination, marketing concept, release period etc. – and themes, versions etc. to be avoided;
- (iii) Specific delivery requirements, such as timing, place of delivery, shipping method, packaging.

The OCS should also specify whether Bandl is responsible for obtaining the necessary licences for the goods and their artwork.

4.2. Changes and/or additions to the OCS as a result of changes and/or additions made to the purchase order by the customer, or

because of unforeseen circumstances or any other reason, are only possible by mutual agreement between Bandl and the customer. Such changes and/or additions will be charged extra to the customer and may have an impact on the scheduled delivery times. Bandl and the customer shall confirm their agreement on this matter in writing. In the absence of a written agreement from both parties regarding changes and/or additions to the order as stated in the OCS, every change and/or addition carried out by Bandl shall be assumed to be carried out in accordance with the (verbal) instructions of the customer. The customer can only invoke the specific requirements, changes and/or additions of/to the order, which are confirmed by Bandl in writing. The customer cannot invoke other requirements, which are not confirmed in writing.

4.3. Agreed prices and delivery times do not apply to repeat orders placed by the customer.

4.4. Bandl ensures that the goods and their packaging always comply with the requirements as stipulated in the OCS. Bandl is not responsible for complying with specific laws and regulations governing delivery and/or use of the goods that apply in the country where the goods will be delivered and/or used, such as (but not only) quality standards, environmental requirements, application for permits, and import regulations, even if Bandl was informed of the country of delivery and/or use of the goods, unless those obligations are expressly stipulated in the OCS.

4.5. It is agreed with the customer whether or not a prototype will be made before starting production. This is specified in the OCS.

Production of the goods will only start upon receipt of the customer's written approval of the proposed artwork and/or the prototype, or if Bandl receives no written remarks from the customers within ten calendar days.

4.6. Bandl will use the blueprints, drawings, models, designs, (technical) descriptions, specifications, choice of materials, calculations, measurements, weights and other information supplied by the customer without having to verify the correctness and completeness thereof, and without bearing any responsibility or liability in that respect. The customer is responsible for the correctness and completeness of that information and will hold Bandl harmless against claims from third parties in that respect.

4.7. Bandl has the right to make necessary technical or non-functional changes to the composition and properties of the goods without the customer being able to derive any right therefrom, provided that the changes do not concern elements of the composition and properties of the goods, indicated as essential for the customer.

4.8. The provisions of Title 7, Section 1 of Book 7 of the Dutch Civil Code, as well as all other provisions of Book 7 of the Dutch Civil Code that regulate related matters do not apply to the work Bandl performs for the client.

5. Intellectual property rights & Confidentiality

5.1. The customer guarantees that the information it supplies does not constitute an infringement of the intellectual property rights of third parties and will hold Bandl harmless against any claims from third parties in that respect.

In particular with regard to the licensing rights necessary for the execution of the purchase order by Bandl, the customer guarantees that the application thereof by Bandl does not constitute an infringement of the licence(s) granted to the customer. The customer shall inform Bandl of all the licensing terms and conditions, and shall hold Bandl harmless against any claims from the licensor or third parties in that respect.

Only where Bandl undertakes to obtain the necessary licence(s) for the goods will it be the responsibility of Bandl to obtain and comply with the licence(s) in question.

5.2. Bandl retains the proprietary rights, copyrights and all intellectual property rights over the moulds, models, samples, prototypes, documents, templates, designs, technical descriptions, calculations, plans, drawings, blueprints, photos etc. produced in pursuance of the contract, irrespective of whether the customer was charged for the production thereof. The delivery by Bandl of goods and/or services shall not entail the transfer of any intellectual property rights.

Unless otherwise agreed, Bandl reserves the right to use that information also in its relations with other customers and, where appropriate, to use it for advertising purposes.

This does not apply if Bandl has made use of intellectual property rights belonging to the customer or a third party. In that case, the customer or that third party remains the owner of its original existing intellectual property rights.

5.3. The moulds, models, samples, prototypes, documents, templates, designs, technical descriptions, calculations, plans, drawings, blueprints, photos etc. must – as long as they have not been made publicly available by Bandl – be kept confidential and must not be copied, used for other than their intended purposes, or disclosed to third parties without the prior written consent of Bandl, and must be returned immediately at the request of Bandl.

This obligation also remains in effect after the contract between Bandl and the customer has terminated, at least until such time as the information becomes public knowledge through no fault of the customer.

5.4. In case of breach of the obligations as stated in this Article 5, a lump-sum compensation equal to € 25.000,00 per each individual breach is due by the customer to Bandl, without prejudice to the right of Bandl to claim full compensation for all damage caused by the breach.

6. Price

6.1. All prices are quoted exclusive of VAT.

6.2. If between the date of the quotation and the conclusion of the contract, or where delivery of the goods takes place more than

three months after the conclusion of the contract, the final price of the goods increases by more than 8% as a result of price increases at the suppliers of Bandl, raw material and equipment prices, wages and social security charges, government-imposed costs, taxes, (environmental) levies and taxes, import and export duties, Bandl shall be entitled to adjust the price accordingly.

6.3. Development and material costs of moulds specifically designed for the production of the goods ordered by the customer will be passed on to the customer. In accordance with the provisions of Article 5.2, those items remain the property of Bandl, even if the customer was charged for the production thereof.

7. Payment

7.1. Except as otherwise provided in writing, for instance by specifying a due date on the invoice, all invoices are payable in full within 30 calendar days after invoice date.

Unless expressly agreed otherwise, the invoices are payable without discount by bank transfer to the account number of Bandl as stated on the invoice.

7.2. Unless otherwise agreed, Bandl will always invoice a down payment of 30% of the total price to the customer. In any case, production of the goods will not start before the down payment has been received. Late settlement of the down payment renders the scheduled delivery time null and void.

7.3. Bandl also reserves the right – in the contract proper or during the performance of the contract, when the customer requests the application of the Continuity of Enterprises Act, or protective measures to creditors or any other form of emergency of a group of creditors – to demand an additional down payment, full payment or bank guarantee from the customer before proceeding with the (further) performance of the contract. If the customer refuses to comply, Bandl reserves the right to cancel all or part of the order, in which case the provisions of Article 3.3 shall apply.

7.4. If partial deliveries are made, each shipment will be invoiced separately.

7.5. Invoices can only be validly protested in writing within seven calendar days after invoice date, referencing the invoice date, invoice number and a detailed statement of the reasons for the protest.

7.6. Unconditional payment of part of an invoice amount counts as express acceptance of the invoice.

Part payments are always accepted without prejudice and with full reservation of all rights, and are first applied to the collection charges, then to the damages, the accrued interest, and finally to the outstanding principal sum, with the longest outstanding principal amount being settled first.

8. Late payment

8.1. In case of non-payment of all or part of an invoice amount on the due date, the outstanding amount shall as of right and without

notice (even if an extension of payment is granted) be increased with:

- (i) default interest at 1% per month overdue, with each new month being counted as a full month;
- (ii) a fixed indemnity of 10% of the invoice amount, with a minimum of €200.00 (excl. VAT), without prejudice to Bandl's right to prove greater loss;
- (iii) all judicial and extrajudicial collection costs, estimated at 10% of the amount to be recovered.

8.2. If the customer fails to fulfil its obligations, such as failure to settle, in full or in part, one or more outstanding sums on their due date, or in case of bankruptcy, judicial or extrajudicial dissolution, suspension of payment, acts of judicial enforcement against the customer, or any other circumstance indicative of (imminent) insolvency:

- (i) Bandl shall no longer be bound to (continue) performance of the contract and may suspend all deliveries with immediate effect and without notice;
- (ii) the outstanding balance of all invoices, even those not yet due, shall become payable forthwith as of right, netting as of right will occur automatically for possible claims the client might have vis-à-vis Bandl;
- (iii) Bandl shall reserve the right to terminate the contract in question and all other contracts as of right fourteen calendar days after giving the customer an unheeded notice of default, in which case the provisions of Article 3.3 shall apply;
- (iv) any easy payment terms that have been granted shall lapse, and Bandl may decide to resume performance of the contract on the strict condition that the price due is settled in full before production and delivery can take place.

8.3 In the event of default by the customer, the customer is obliged to reimburse all extrajudicial collection costs of Bandl. The collection costs are calculated in accordance with the collection rate of the Dutch Bar Association, with a minimum of €70. Bandl is not obliged to demonstrate that the extrajudicial collection costs up to the aforementioned percentage CQ amount have actually been incurred by Bandl.

9. Delivery times

9.1. Bandl always uses its best efforts to meet the scheduled delivery times. Only in case the indicated delivery time has been exceeded by more than thirty calendar days, a commercial discount can be granted. This discount shall be deemed to cover the customer's entire loss and cannot be combined with other claims made by the customer in connection with the delay in delivery.

The fact of exceeding the scheduled delivery time cannot give rise to the termination, cancellation or rescission of the contract for account of Bandl and shall not release the customer from its obligations.

9.2. The scheduled delivery time automatically becomes null and void in the following cases:

- (i) Bandl is not in timely possession of all the necessary information, specifications and instructions of the customer;
- (ii) Bandl is not in timely possession of the licensor's approval if it is the customer's responsibility to obtain the necessary licence(s);
- (iii) Late payment of the down payment or of the full price where this was agreed, or late submission of the bank guarantee, if it was stipulated that the customer must pay the price (in full or in part) or must submit a bank guarantee before Bandl is bound to perform the contract;
- (iv) Bandl is not in timely possession of the customer's approval of the artwork and/or a prototype as per Article 4.5;
- (v) Changes or additions are made to the purchase order compared to what was agreed in the OCS (including as regards delivery and packaging conditions);
- (vi) Force majeure and/or hardship, as defined in Article 13.

10. Delivery

10.1. Due to production, packaging or other reasons, there may be a shortage or surplus of up to 5% in the quantity delivered compared to the quantity agreed.

10.2. The goods shall be delivered in accordance with Incoterms 2020 as stated in the OCS.

10.3. If the customer has specific requirements as regards packaging and transport, and/or if the customer wants deliveries made to more than one delivery address, this must be specified in the OCS. Any such special requirements subsequently imposed by the customer will be charged extra and will render the initially agreed delivery time null and void.

10.4. If delivery has not been taken of the goods at the delivery date and place appointed by the customer, they shall nevertheless be deemed to have been delivered on time, without any notice of default being required. They shall be warehoused at Bandl at the customer's expense and risk, including the risk of fire. In such case, Bandl reserves the right to charge the customer for all costs, including warehousing costs.

10.5. If the goods are delivered on Euro pallets or disposable pallets, the customer shall supply the same number of pallets of the same type and quality to the carrier at the time of delivery. Delivered pallets that are not exchanged by the customer shall be charged extra.

11. Complaints

11.1. When the goods are delivered, the customer must immediately carry out a first check of the conformity of the shipment, such as, but not only, the correct place of delivery, quantity (subject to what is provided for in Article 10.1), composition, size, visible defects, etc.

Complaints concerning immediately verifiable anomalies and/or non-conformity of the shipment will only be considered if the customer reports those complaints in writing within seven calendar days after the goods have been delivered, and in any case before their (full or partial) use, resell or delivery to a third party, operation, processing and/or incorporation, failing which the customer shall irrevocably be deemed to have accepted the goods.

11.2. Any complaints for hidden defects in the goods must be reported in writing to Bandl, giving a clear description of the problem, within twenty calendar days after distribution by the customer, and at the latest within two months after the goods were delivered to the customer by Bandl.

11.3. Prior approval by the customer of the artwork and/or a prototype of the delivered goods implies the approval by the customer of all the elements which the customer had noticed, or should have noticed, at the time of approval, more particularly with regard to the design, functionalities, measurements and all other visible characteristics of the goods. After such approval, the customer shall make no more claims based on elements that were already noticed, or could have already been noticed, at the time of prior approval.

11.4. If any defect is found, the customer is obliged to stop using, processing and/or incorporating the goods in question immediately and to do, and refrain from doing, all that is reasonably possible to prevent (further) damage.

11.5. The customer is obliged to lend all assistance required by Bandl for the investigation of the complaint, for instance by allowing Bandl to investigate (on site) the conditions in which the goods are processed, incorporated and/or used. Bandl reserves the right to establish and investigate the cause of the defects on site together with the customer.

Goods may only be sent or brought back with the prior written consent of Bandl. Bandl shall on no account be liable for loss or damage to returned goods until Bandl has taken delivery of them on its company premises. In the absence of an agreement on the return of defective goods, all returns will be refused and all costs will be charged on to the customer.

If an on-site investigation is not possible or expedient, and the defective item cannot be returned to Bandl, at least the following information must be transmitted to Bandl:

- (i) Date of use, operation, processing and/or incorporation of the defective item;
- (ii) Description of the defect, documented with photos;
- (iii) Production date, serial number, type, etc.

Without the information, Bandl can never be held responsible for any damage.

11.6. The customer is obliged to reimburse the costs incurred as a result of unjustified complaints including the (legal) procedural costs and the attorney's fees.

12. Liability

12.1. Unless expressly agreed otherwise, the goods are supplied on the basic principle that the customer has taken all the necessary measures to ascertain that they are suitable for the use intended by the customer and for the specific manner of handling, such as the way in which the goods are packaged by the customer.

Consequently, the goods shall be employed, used and processed by the customer or by a third party on the customer's own responsibility and risk. Bandl shall on no account be held liable for damage resulting from the discovery that the goods are not suitable for their intended use or cannot be processed as planned, unless and insofar as the specific use and manner of processing is specified in detail in the OCS.

12.2. Non-functional differences between specifications and quality indications and the actual execution of the goods, or minor variations with the usual tolerances (such as, but not only, in terms of colour), shall not give the customer cause for complaints, damages or any other indemnity, or rescission, cancellation or termination of the contract.

Assessment of such variations must involve a representative portion of the shipment, in order that the delivery cannot be rejected on the basis of minor variations in just a few samples from the shipment.

12.3. If a recall is organized of the delivered goods, the customer is obliged to cooperate in this recall campaign and to refrain from further distributing the goods. No indemnification can be claimed from Bandl for loss or damage resulting from the continued distribution of the goods following such a recall campaign.

12.4. Bandl's liability is in any case limited, at Bandl's choice and discretion, to the replacement, repair or subsequent delivery of missing or defective goods.

If replacement, repair or subsequent delivery is, or has become, impossible or pointless, the customer shall be entitled to compensation for the damage in lieu of performance. Bandl's liability shall on no account extend beyond the invoice value of the defective goods.

12.5. No indemnification can be claimed from Bandl once any one of the time limits stated in Article 11 has expired.

Furthermore, the customer shall on no account be entitled to claim warranty or indemnification by Bandl for:

(i) damage due to incorrect, incomplete or late information and instructions from the customer (such as blueprints, drawings, models, designs, (technical) descriptions, calculations, specifications, functionalities, choice of materials, measurements, weights, etc);

(ii) damage caused directly or indirectly by an act of the customer or a third party, irrespective of whether they are caused by an error or negligence;

(iii) damage caused by abnormal, improper or exceptional use, handling, stress and/or wear of the goods; damage caused by failure to follow the instructions of Bandl, and damage caused by using the goods for other than their intended purposes;

(iv) damage arising after delivery to the customer, which was not yet present, even inherently, at the time of delivery, but arose after handling by the customer or by a third party, or by improper warehousing or storage of the goods, such as, but not only, storage in humid and unsuitable conditions, and storage in an atmosphere that is toxic or not safe for food;

(v) additional damage caused by continued use, processing and/or incorporation of the goods after a defect has been found;

(vi) damage arising after continued distribution of the goods following the organization of a recall procedure, or claims with respect to goods that are sold although they were intended solely for promotional purposes;

(vii) indirect and consequential damage, such as, but not only, loss of income, damage to reputation, damage to third parties and/or damage to products with which the goods come into contact;

(viii) damage arising from force majeure and hardship in accordance with the provisions of Article 13.

13. Force majeure & Hardship

13.1. Bandl shall not be liable for any failure in the fulfilment of its obligations due to force majeure or hardship.

Force majeure or hardship gives Bandl the right to temporarily suspend the fulfilment of its obligations.

13.2. Are contractually regarded as cases of force majeure, all circumstances which at the time of conclusion of the contract could not be reasonably foreseen and are unavoidable, and which render Bandl or the client unable to perform the contract or which make the performance of the contract more onerous or difficult financially or otherwise than was normally anticipated, so that it would not be reasonable to expect Bandl or the client to carry on performing the contract, or to perform the contract under the original terms and conditions.

Are contractually regarded as cases of hardship, external circumstances other than a case of force majeure which render the Parties unable to to perform the contract or which make the performance of the contract very difficult. Whenever hardship occurs, the Parties will renegotiate the contract.

Where the situation of force majeure lasts longer than one month, both Bandl and the customer shall be entitled to terminate the contract by simple written notice, without Bandl being liable for any compensation whatsoever. In such case, the customer shall be required to pay all costs already incurred and for all work already done up to the date of suspension or termination of the contract.

Force majeure or hardship is understood to include, among other things, war, strikes (including by customs officers) and lockout, disease, staff shortage, business organizational circumstances, seizure (including by customs and police officers), natural

circumstances and weather conditions, fire, machine and/or tool breakdowns, import and export bans and restrictions, delays in customs clearance or other delays at customs, such as retention of goods for physical inspection, force majeure at suppliers or carriers of Bandl, etc.

14. Netting

In the event of suspension of payment, bankruptcy or another case of concurrence at the customer, Bandl and the customer will automatically and legally compensate each other for all current and future debts.

This set-off will in any event be enforceable against the trustee in bankruptcy and the other concurrent creditors, who will therefore not be able to oppose the set-off carried out by the parties.

15. Retention of title

15.1. The goods delivered by Bandl shall remain the property of Bandl until full payment of the sums due (principal, interest and costs) by the customer, even after processing, merger and incorporation.

The customer shall not sell, pledge to a third party, encumber with security, or in any other way dispose of the goods delivered until the price has been paid in full.

15.2. In the event that the customer resells the goods belonging to Bandl, even if processed, merged or incorporated, it shall transfer to Bandl all claims arising from this resale. The customer is obliged to hand over to Bandl the sums it receives for the goods to which the retention of title applies, by way of compensation for the cessation of Bandl's ownership right and as security for Bandl to the value of the goods in which this title subsists. Bandl shall retain ownership of all down payments in order to make up for any losses made on resale.

15.3. Processing of the goods by the customer does not entail a transfer of title. If the goods are incorporated in other products, Bandl becomes co-owner of the new product in proportion to the value of the goods to which it retains title, until such time as the price has been paid in full without prejudice to Bandl's right to a full compensation of all damage suffered.

15.4. The different transactions/contracts between the parties shall be treated as constituting part of one economic entity, so that Bandl always retains the title to the goods in the customer's possession at that moment as long as the customer has an outstanding debt to Bandl.

15.5. It is also agreed between the parties that Bandl always has a pledge on the customer's goods in Bandl's possession at that moment as long as the customer has an outstanding debt to Bandl.

15.6. The aforementioned retention of title does not in any way alter the risk transfer arrangement as per Article 10.

16. Processing of personal data

16.1. The customer gives Bandl permission to include the personal data provided by the customer in an automated data file. Bandl hereby acts in accordance with the GDPR.

This data can be used for the purpose of executing the agreement, the administration of the customer base and conducting information or promotional campaigns in connection with the goods offered by Bandl in the context of the contractual relationship between Bandl and the customer.

16.2. The customer can always request notification and correction of its data. If the customer no longer wishes to receive commercial information from Bandl, the customer must inform Bandl of this. The customer gives Bandl permission to use copies or images of the delivered goods for advertising purposes, including by publication on the website or in folders, even if intellectual rights belonging to the customer or a third party have been used, unless otherwise agreed in the OCS.

17. No waiver of right

The (repeated) failure by Bandl to exercise any right may only be construed as the toleration of a particular situation and shall not give rise to a forfeiture of rights.

18. Proportionality of the terms and conditions

For the determination of these terms and conditions, the risks of both parties have been weighed and allocated.

19. Applicable law & Jurisdiction

19.1. Any and all disputes relating to the implementation and/or interpretation of these general terms and conditions and any other agreement between Bandl and the customer shall be submitted to the exclusive jurisdiction of the courts and tribunals of the district where Bandl has its registered office.

19.2. Dutch law applies.

20. Language

Only the Dutch version of these General Terms and Conditions is legally valid.

They can be found in all of these languages on the website www.bandl.toys/