

# Baikowski® – GENERAL CONDITIONS OF SALE

## Article 1 – DEFINITIONS - SCOPE

### 1.1 / Definitions

In these General Terms and Conditions, the following terms have the meanings specified below:

**Delivery note:** Document established by the Seller upon delivery of the Products.

**GCS:** The present General Conditions of Sale.

**Customer:** Natural or legal person issuing an Order to the Seller.

**Order:** Purchase Order issued by the Customer, including notably the description of the product or service ordered.

**Contract:** A set of documents covering the contractual relationship between the Seller and the Customer relating to the sale of the Products and which may include one or more Orders. The following documents are an integral part of the Contract, with the following order of priority:

- The Specific Conditions of Sale,
- The present GCS,
- The Orders accepted by the Seller,
- The studies, quotations and technical documents submitted prior to the signature of the contract and accepted by the Parties,
- The Delivery notes,
- The invoices.

**SCS:** Specific Conditions of Sale as agreed by the Parties.

**Parties:** Customer and Seller

**Product:** Any product, Tools, material, equipment or service, part of the Order.

**Tools:** All equipment, machines, moulds, prototypes... necessary to manufacture the Products.

**Seller:** BAIKOWSKI and/or its affiliates, it being understood that an affiliate is a company in which BAIKOWSKI directly or indirectly holds more than 50% of the capital or voting rights.

### 1.2 / Scope

These GCS apply to any sale of Products by the Seller to its Customers and prevail over any general purchasing conditions or any other document issued by the Customer, whatever the terms. Any other condition in contradiction with these GCS will only be taken into account if it has been expressly accepted in writing by the Seller.

These GCS may be supplemented by any SCS agreed and signed by the Parties. The Customer acknowledges that he has read and understood all of these GCS and that he has received the necessary advice and information to ensure that the offer meets his needs.

The Seller reserves the right to modify at any time the present GCS which will apply to any Order issued by the Customer after communication by the Seller of said modifications. The fact that the Seller does not at any time avail itself of any of the provisions of the GCS shall not be

construed as a waiver of its right to do so at a later date.

In the event that any provision of the GCS and/or the Order is declared invalid, the other provisions shall continue to have effect.

These GCS replace any GCS previously in force.

## Article 2 – OFFER and ORDER

Any Order must be addressed in writing to the Seller.

Orders become binding only once accepted by the Seller ("Binding Order").

Any request for modification of an Order shall be made in writing (fax or e-mail) within 8 days after receipt by the Seller of the original Order. Any modification of the Order will lead to a new delivery date.

Cancellation or termination of all or part of a Binding Order may only occur with the written approval of the Seller. In the event of cancellation of all or part of a Binding Order, the Seller shall be entitled to invoice the Customer for costs and expenses already incurred by the Seller and/or its subcontractors for the preparation or execution of the Order (such as notably any raw materials and components already purchased and any products already manufactured and/or in the course of manufacture). Any storage by the Seller in excess of what is provided for in the Contract will result in an increase in the price of the Products remaining to be delivered.

No Order may be assigned nor transferred, in whole or in part, by the Customer, to anyone in any manner whatsoever and for any reason whatsoever, without the prior written approval of the Seller.

## Article 3 - TOOLS

### 3.1 / Tools belonging to the Seller

Unless otherwise agreed between the Parties, the Tools shall remain the property of the Seller as an integral part of its means of production and its intellectual property, even if the Customer contributes to the definition of the specifications of said Tools.

### 3.2 / Tools and raw materials supplied by the Customer

When provided by the Customer, the Tools must include the trademarks, assembly or use markings and must be delivered free of charge on the site specified by the Seller.

The Customer is liable for the perfect match of the Tools with the drawings and specifications. However, at the Customer's request, the Seller shall check this concordance and invoice the cost of this service.

If the Seller deems it necessary to make changes for the proper execution of the Order, the resulting costs shall be borne by

the Customer, for which the Seller has obtained prior express agreement.

Unless prior written agreement between the Parties, the Seller does not guarantee the duration of use of the Tools provided by the Customer.

In any case, if the Tools received by the Seller are not in accordance with the use which he was entitled to obtain, the price of the Products initially agreed upon must be subject to a request for revision by the Seller, an agreement with the Customer must be reached before any parts are executed.

When the Customer supplies the Seller with raw materials, components or equipment, the Seller shall not be liable for any defects in the supplied materials, components or equipment, nor for any consequences arising from such defects.

### 3.3 / Tools manufactured by the Seller at the Customer's request

When the Seller is instructed by the Customer to manufacture or have manufactured the Tools, the cost of manufacturing, as well as the costs of replacement or repair, are paid by the Customer regardless of the price of the Products.

Unless otherwise agreed between the Parties, the Tools shall be paid at a rate of 50% upon confirmation of the Order and the balance at its completion or on the date of its acceptance, as the case may be.

The transfer of ownership of any Tools financed by the Customer shall only take place after full payment of the price of said Tools by the Customer.

### 3.4 / Conditions of custody and insurance of the Tools provided by the Customer and/or carried out by the Seller at the Customer's request

The Tools remain on deposit with the Seller and the Customer may only take possession of them after full payment of all invoices due to him for whatever reason. Unless otherwise agreed between the Parties, the Seller reserves the right to apply storage charges. In addition, the Seller is entitled to proceed with its destruction, after a formal notice for the return of the Tools and/or the payment of the storage cost by the Customer, sent by registered letter with acknowledgement of receipt, remains without effect after a period of three months.

The Seller shall refrain at any time from using the Customer's proprietary tools on behalf of third parties without the Customer's prior written approval.

The Customer has full responsibility for the Tools he owns and undertakes to take out at his own expense an insurance policy covering his deterioration or destruction at the Seller's premises, excluding any recourse against the Seller.

In addition, in the event of special

# Baikowski® – GENERAL CONDITIONS OF SALE

manufacturing requiring the acquisition of a specific material or equipment, the Customer undertakes to take them back at their net book value.

## Article 4 - STUDIES, MOCK-UPS, PROTOTYPES, TESTS, SAMPLES

Unless otherwise agreed between the Parties, manufacturing studies as well as those aimed at improving the quality and cost pricing of the Products, prototypes, carried out within the framework of an Order, remain the property of the Seller.

Under no circumstances may they be used, reproduced, patented, deposited or communicated to third parties by the Customer without the prior written approval of the Seller.

## Article 5 - PACKAGING

In the absence of any specific agreement, the Products are delivered in a packaging compliant with the standards of the profession.

The Seller shall not be liable for damage due to insufficient packaging if such packaging has been requested or accepted by the Customer or if special conditions of carriage have not been previously communicated in writing by the Customer to the Seller.

## Article 6 - DELIVERY

### 6.1 / Delivery lead-time

Delivery lead-times are given only as an indication and run from the date of confirmation of the Order by the Seller, or at the latest from the date on which all documents, materials and details of performance have been provided by the Customer, or the date of fulfilment by the Customer of any other preconditions which are under his responsibility.

If the delivery date is mandatory, it must be specified and agreed in writing by the Seller.

The delivery date will be automatically extended in case of delay attributable to the Customer, or in case of force majeure as stated in Article 12 of these GCS.

In such a situation, the Parties shall then immediately consult with each other to agree on appropriate solutions.

### 6.2 / Transport – Product delivery

Unless otherwise agreed between the Parties, the Products are delivered "EX WORKS" (Incoterm 2010) and travel at the Customer's risk.

Delivery is made by direct delivery of the Products, either to the Customer or to the carrier designated by him or chosen by the Seller as defined within the Delivery note. Seller reserves the right to require Customer to take delivery of all Products in an Order in a single delivery.

### 6.3 / Conformity

Upon receipt of an Order, it is the Customer's responsibility to check the condition, quantity and conformity of the Products with the specifications mentioned on the delivery note.

Any Product that has not been the subject of reservations (including apparent defect, non-conformity or missing Product) by registered letter with return receipt within 3 days from the delivery date, shall be considered as accepted by the Customer.

In case of non-conformity, it is up to the Customer to provide all the justifications as for the reality of the defects or missing Products noted, the Seller reserving the right to proceed to any observation and verification.

No return of Product may be made by the Customer without the prior written approval of the Seller. Return costs shall be borne by the Seller only in the event that an apparent defect, non-conformity or missing Products are actually found by the latter or its agent. Only the carrier chosen by the Seller is authorized to return the defected Products.

In addition, any corrective actions made by the Customer on defected Products without the prior and written approval of the Seller on its principle and on its cost, entails the loss of the right to the guarantee.

The complaint made by the Customer under the conditions and according to the modalities described by the present article does not suspend the payment by the Customer of the Products which are not the subject of a complaint.

### 6.4 / Suspension of deliveries

In the event of non-payment of an invoice, in full or in part, which has expired, and after formal notice remained without effect within 48 hours, the Seller reserves the right to suspend any delivery or new Order in progress and/or to come, without the Customer being able to claim any compensation, for any reason whatsoever. In the event of the opening of insolvency proceedings or liquidation of property, the Seller reserves the right to cancel pending Orders and claim the delivered Products in stock.

### 6.5 / Transfer of Risk

Unless otherwise agreed between the Parties and notwithstanding the retention of title clause stipulated in Article 9 below, the risks relating to the Products (including the risks of loss or destruction) shall pass to the Customer upon delivery of the Products to the Customer, or to the carrier designated by him or by the Seller.

## Article 7 - PRICE

Unless otherwise agreed between the Parties, the prices are Ex-works (incoterms 2010). All prices are net prices.

## Article 8 – PAYMENT TERMS

Unless otherwise agreed between the Parties, payments shall be made by the Customer within thirty (30) days net from the date of the invoice, by bank transfer, to the bank and at the place indicated by the Seller.

Any delay in payment shall bear interest for each day of delay at the rate of 3 times the legal interest rate in force at the date of default, without prejudice to any damages to which the Seller may claim as well as the payment by the Customer of a fixed compensation of €40 for collection costs. An additional indemnity may be claimed when the recovery costs incurred exceed the amount of the fixed indemnity.

The Customer is not dispensed to pay all or part of an amount due to the Seller or to delay payment because of any of its claims, in particular in respect of warranty rights, without the agreement of the Seller.

## Article 9 – TITLE RETENTION

The products become the property of the Customer upon full and effective payment of all sums due to the Seller, in principal and incidental.

In the event of non-payment or partial payment, the Seller may claim the Products and terminate the Order and/or the Contract, as specified above.

Until full payment, the Customer must take all necessary measures to (i) ensure that the delivered Products are stored in good conditions of storage and to clearly identify them as belonging to the Seller, so that they are individualized and cannot be confused with products from other Sellers, (ii) not to process, incorporate, resell or pledge such Products, and (iii) immediately notify Seller of any claims by third parties relating to such Products.

## Article 10 - WARRANTY

### 10.1 / Scope of the Warranty

The Seller warrants that the delivered Products comply with the contractual specifications, with the tolerances of use of the profession. However, this warranty applies only to Products that:

- have regularly become the property of the Client.
- were entirely manufactured by the Seller.

The Seller's warranty is limited to crediting the Customer for the value of the defected Products, or to replacing them free of charge, or to proceed or have proceeded, as the case may be, to bring them into conformity.

# Baikowski® – GENERAL CONDITIONS OF SALE

## 10.2 / Exclusion of warranty

The Seller's warranty is excluded for the following defects:

- defect due to the Customer's failure to comply with the contractual specifications and instructions,
- defect due to normal use of the Products,
- defect due to conditions of storage by the Customer,
- default due to specifications and/or requirements provided by the Customer,
- defect due to Products modification by the Customer or by a third party without prior and written approval of the Seller,
- defect not existing at the time the Product was delivered,
- defect attributable to the design of the Final Product integrated by the Customer or by a third party into the Product or into which the Product has been incorporated by the Customer or by a third party or to the instructions of the manufacturer of the Final Product.

## Article 11 – LIABILITY

The Seller's liability is limited to direct material damage caused to the Customer resulting from faults attributable to the Seller in the performance of the Contract. Under no circumstances will the Seller be obliged to compensate the Customer for immaterial and/or indirect damages such as the costs of any operations that may be carried out on the Products before they are put into service, assembly and dismantling costs, operating losses, profit, chance, commercial prejudice, loss of profit, etc., as far as legally permissible.

Seller's liability is limited to the amount of the Order that is the subject of the claim, all causes combined, excepted for injury and gross negligence.

The Customer guarantees the waiver of recourse by his insurers or third parties in contractual relationship with him against the Seller or his insurers beyond the limits and exclusions set above.

## ARTICLE 12 - FORCE MAJEURE

None of the Parties may be held liable for any failure to comply with any of its obligations, if such failure results from a case of force majeure as defined by law.

Constitute a case of force majeure for the Seller notably: Strikes affecting the Seller, shortages of raw materials, delays by subcontractors, carrier strikes or similar events.

The invoking Party shall notify the other Party by registered letter with acknowledgement of receipt within five (5) working days of the occurrence of the

event.

In the case of force majeure exceeding more than one (1) month, the Parties reserve the right to terminate the Order and/or the Contract without any compensation.

## Article 13 – INTELLECTUAL PROPERTY

Each Party shall retain ownership of the rights it holds in its background knowledge, defined as intellectual property rights and know-how owned or controlled by the Party concerned and obtained before or outside the contract.

The plans, studies, drawings, sketches, moulds, plates, manufacturing diagrams, models, specifications, technical and commercial nomenclatures, recommendation documents, test results, catalogues, brochures, notices, patents, models and drawings, notes and, in general, all documents, written or verbal information communicated to the Customer shall remain the exclusive property of the Seller.

Consequently, the Customer is prohibited from making any distribution, use, adaptation or reproduction without the prior written approval of the Seller.

Any transfer of intellectual and/or industrial property rights or know-how of the Seller to the Customer, or any existing rights of the Customer in designs inherent to the Seller's Products and developed by the Seller, shall be the subject of a written contract between the Parties and shall not entitle the Customer to use such transferred rights or existing rights in designs to restrict the Seller's production of products for other customers.

The Customer guarantees to the Seller the existence of his title to use any design, model, mould, patent, specification or any other industrial and/or intellectual property support which he makes or has made available to the Seller for the performance of the Order and guarantees the latter against all claims and all damages resulting from any infringement of any third parties property rights.

## Article 14 - CONFIDENTIALITY

The Parties undertake to keep confidential all information, data or documents transmitted by the other Party, in writing or orally (hereinafter "Confidential Information") related to the Order, and not to disclose the Confidential Information directly or indirectly.

The Parties are strongly committed to the execution of this obligation by all their employees, servants, subcontractors, partners, and are responsible for all damages that could result from non-compliance with this obligation.

This obligation of confidentiality does not apply to the Parties:

- In the event of an administrative or

judicial injunction,

- For information which, at the time of its disclosure, is or becomes part of the public domain without violation of the Agreement by the receiving Party,
- For information that would be disclosed by a third party lawfully entitled to make such disclosure.

The Parties are bound by this obligation for a period of ten (10) years from the date of the Order.

## Article 15 - TERMINATION

In the event of breach by one Party of its contractual obligations, the other Party shall have the right, after a notice of default without effect for a period of fifteen (15) days, to terminate the Order and/or the Contract by operation of law, without prejudice to its rights to damages.

The Customer who cancels all or part of his Order or who defers the delivery date, without the Seller bearing the responsibility, is required to compensate the latter for all costs incurred on the date of receipt of the Customer's notice, without prejudice to any damages that the Seller will have to bear following this decision.

## Article 16 – APPLICABLE LAW - LITIGATION

### 16.1 / Applicable Law

The present GCS are governed by French law without reference to conflicts of laws principles, and the UN Convention on the International Sale of Goods (Vienna 1980) shall not apply.

### 16.2 / Litigation

Any dispute relating to the execution and/or interpretation of these GCS which the Parties could not resolve in amicable terms within two (2) months from the date of the dispute, shall be brought before the competent Courts of the place of registration of the Seller. However, the Seller reserves the exclusive right to bring any dispute concerning the Customer before the courts of the place of registration of the Customer.

## 17. MISCELLANEOUS

### 17.1 / Compliance with law – Information

The Customer having accepted the technical specifications of the Products, acknowledges having a perfect knowledge of the formulation and properties of these Products and of the potential dangers. It is up to him to carry out all useful controls. The Customer is solely responsible for compliance with applicable laws and regulations relating to the importation, marketing and use of the Products in their country of delivery. The Customer is solely responsible for the proper information of its customers and end consumers regarding the use of the Products and/or their potential dangers and any

consequences that may result.

### 17.2 / Hardship clause

In the event of an event beyond the control of the Parties that compromises the economic scheme of the contract, the Parties agree to negotiate in good faith an amendment restoring the original balance. The following events in particular are covered: changes in raw material prices, customs duties, exchange rates and legislation.

If no agreement is reached within thirty (30) days, the Parties reserve the right to terminate, without compensation, the current and/or future Order(s) subject to 30 days' notice. During such notice, the Order and/or the contract shall continue under the conditions in force on the date of notification of termination.

### 17.3 / Sub-contractor

The Seller may freely subcontract Orders placed by the Customer to any third party of its choice, subject to notifying the Customer within a reasonable time.

## 18 ANTICORRUPTION

The Customer shall comply with, and will not cause the Seller and its Affiliates, associates, directors, officers, shareholders, employees, representatives or agents worldwide to be in violation with any applicable anti-corruption regulation and notably without limiting the foregoing to any provision of the United States Foreign Corrupt Practices Act (the "FCPA"), U.K. Bribery Act 2010 and the French Sapin 2 law. Without limiting the foregoing, the Customer will not, directly or indirectly, pay any money to, or offer or give anything of value to, any "government official" as that term is defined by the respective regulations, in order to obtain or retain business or to secure any commercial or financial advantage for him and/or the Seller or any of their respective Affiliates. The Customer must also (1) make and keep books, records and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets of the company and (2) devise and maintain a system of internal accounting controls. The Customer warrants that all persons acting on its behalf will comply with the provisions of the present article. The Customer further warrants and represents that should it learn or have reason to suspect any breach of the covenants in this Agreement, it will immediately notify the Seller.

If the Seller learns or has reason to suspect or brings evidence that the Customer has been engaging in material or several repeated breaches of the provisions of the present article, it will notify the Customer accordingly and require the Customer to take the necessary remedial action in a reasonable time and to inform it about such action. If the Customer fails to take

the necessary remedial action, or if such remedial action is not possible, the Seller may, at its discretion, either suspend the Contract or terminate it, it being understood that all amounts contractually due at the time of suspension or termination of the Contract will remain payable, as far as permitted by applicable law.

## 19. Data protection

For personal data, each Party shall comply with the regulations of privacy legislation and shall take required technical and organizational measures to protect such data, for example, but not, limited to, against unauthorized access, unauthorized modification or passing on, in particular in case of transmission of such data in a network.

*Version March 2020*