



# BRB

## GENERAL TERMS AND CONDITIONS OF SALE, DELIVERY, AND PAYMENT

---

Of

**BRB INTERNATIONAL B.V. and/or any associated enterprise worldwide**

Branskamp 12, 6014 CB Ittervoort, The Netherlands

Filed with the Chamber of Commerce for Noord- en Midden Limburg (North and Mid Limburg) under reference numbers including 13020953

### 1. Scope

- 1.1 These General Conditions govern all offers, invitations to treat, instructions, Contracts and successive Contracts, and the supply of goods and services of BRB International B.V. and/or all worldwide enterprises associated with it now or in the future, together referred to below as 'BRB,' supplied to, or entered into with, any third party, referred to below as 'the Client,' and the performance thereof.
- 1.2 Associated enterprises: all enterprises referred to in these General Conditions and all entities not referred to by name in which BRB holds a direct or indirect interest of at least 50 per cent. These General Conditions also apply to companies including BRB Invest B.V., BRB International B.V., BRB USA Inc., AB Specialty Silicones LLC, BRB Singapore Pte. Ltd., BRB Hong Kong Ltd., BRB CEE Sp. ZOO., Amochem Sdn. Bhd, BRB Silicones South Africa Pty. Ltd., Qingdao BRB Trading Co. Ltd., and BRB Silicones Synthesis Sdn. Bhd.
- 1.3 Any deviation from the terms of the General Conditions is only possible insofar as it has been expressly agreed in writing by BRB.
- 1.4 BRB expressly rejects any general or special terms and conditions of the Client, such as purchase conditions, irrespective of whether reference is made to these once these General Conditions have been received by the Client, unless BRB has confirmed in writing that it accepts such terms and conditions.
- 1.5 Written communications between BRB and the Client are deemed to include communications sent by electronic data carriers.
- 1.6 These General Conditions are available on the BRB website: [www.brb-international.com](http://www.brb-international.com). BRB reserves the right to revise these General Conditions at any time. BRB will notify the Client of any such revision by a) sending the revised General Conditions to the Client, or b) uploading the revised



# BRB

General Conditions to the said website, or c) by other means. The revised General Conditions come into force as soon as the Client was able to obtain sight of them and as from that moment they govern all orders placed by the Client and confirmed by BRB.

- 1.7 No rights can be derived by the Client in respect of future transactions by virtue of any incidentally-agreed deviations from these General Conditions.

## **2. Offers, instructions, and contracts**

- 2.1 All offers from BRB are subject to contract, unless the offer contains a period for acceptance. The content of advertising claims, descriptions, and images in catalogues, samples, advertising, and other materials containing information materials do not bind BRB.
- 2.2 No rights can be exercised in respect of an offer if the product or service to which the offer relates is no longer available.
- 2.3 All prices quoted by BRB may be revised or withdrawn by BRB without the need to give any prior notice. Acceptance of an offer and/or the placing of an order by the Client cannot be cancelled.
- 2.4 A Contract is only binding once acceptance by the Client of an offer made by BRB, or an order placed by the Client, is confirmed by BRB in writing, or once BRB has begun to perform its part of the Contract without the said written confirmation. In the latter case, the Client is deemed to have entered into the Contract on the basis of the terms of the offer, or in accordance with the then current terms and conditions, and prices, as fixed by BRB.
- 2.5 BRB is entitled to refuse instructions or an order at any time without the need to give reasons. Each confirmation constitutes a separate contract for sale of the products specified therein, and any defect in the supply of such products has no legal or other consequences in respect of other confirmed orders.



# BRB

- 2.6 A price quotation relates only to the quantities for which such quotation is issued.
- 2.7 Any identified inaccuracies in the confirmation of order must be notified to BRB in writing no later than two working days after the date of the confirmation of order, failing which the right to rectification is lost.
- 2.8 Any oral statement or promise will only bind BRB insofar as it is confirmed or repeated in writing by BRB.

### **3 Information and indemnity**

- 3.1 The Client guarantees the accuracy, completeness, and reliability of the information supplied by, or on behalf of, the Client to BRB, even if the information originates from a third party engaged by the Client.
- 3.2 If performance or continued performance of the Contract is not possible until further information is received from the Client, then BRB is entitled to suspend such performance or further performance until it is satisfied that the Client has supplied it with all information required. If and insofar as the necessary information has not been supplied in time or at all, the Client is liable to compensate BRB for its costs and other loss incurred in line with the usual fees charged by BRB.
- 3.3 The Client is liable for loss suffered by BRB and/or its employees as a result of any inaccuracy or omission in the information supplied by the Client.
- 3.4 The Client indemnifies BRB and its employees in respect of any third-party claim, including a claim by employees of BRB, for loss connected with the performance of the Contract resulting from any act or omission of the Client, the inaccuracy or incompleteness of any information supplied by or on behalf of the Client, or any unsafe situation within the Client's business premises or organisation.

### **4 Conformity**

- 4.1 BRB does not guarantee that the products comply with certain statutes or regulations, decrees, rules, codes, or standards (laws and standards), unless indicated expressly in the confirmation or specifications.
- 4.2 BRB guarantees that, pursuant to Article 6 of these General Conditions, at the time of delivery the product complies with the specifications / product information as supplied by BRB or, if this is not supplied, as BRB will provide on request.



# BRB

4.3 BRB gives no other express or implied guarantee relating to the product, not even with regard to adequate quality, saleability, suitability for a specific purpose, or otherwise.

## 5 Prices

5.1 The agreed prices and currency are binding for the specified period. Unless agreed otherwise, the prices from BRB include standard packaging, and are net of VAT and any other comparable relevant taxes, duties, or other liabilities charge in any given country in respect of the products and/or their delivery ('taxes'). Taxes are payable by the Client and are indicated on each invoice or separately charged by BRB to the Client. If BRB gives any discount, such discount relates only to the delivery specified in that particular order confirmation. All agreed prices are net. If BRB is liable for VAT, sales tax, usage tax, excise duties, energy tax, customs tariffs, import or export duties, or similar taxes or government-imposed surcharges relating to the sale, delivery, release from customs warehouse, or transport of the products, the Client must pay such liabilities to BRB over and above the agreed price, with no right to set-off and/or suspension.

5.2 If BRB has paid for the packaging, transport, postage, or insurance of products without any price having been agreed for such costs, it is entitled to charge the Client either for the costs actually incurred or its standard rate of costs, at its discretion.

5.3 If there is an increase in costs as a result of any external factors once the Contract has come into effect, BRB is entitled to adjust the price in line with the amount by which the costs incurred by BRB have increased. An 'increase in costs' includes, but is not limited to, an increase in transport costs, import and export duties, customs tariffs and excise duties, or other duties and/or taxes imposed in the Netherlands or abroad, an increase in costs resulting from the implementation of any such new fees, taxes, or duties, an increase in wages, salaries, and national insurance payments, an increase resulting from changes in the exchange rate / currency values, and an increase in the cost of raw materials, ancillary materials, goods, and/or services whether procured by BRB from third parties or otherwise.



# BRB

## 6 Delivery and delivery periods

- 6.1 Specified and agreed delivery dates are approximate only and are not deadlines. If BRB fails to deliver by a certain date or within a certain period, it is not thereby liable to pay compensation, and the Client is not entitled to terminate the Contract and/or to suspend or set off any of its obligations arising from the Contract.
- 6.2 Specified and agreed delivery dates are based on the work situation at the time the Contract was entered into and on the prompt supply of goods required by BRB for the performance of the Contract. If there is any delay as a result of any change in the work situation or failure to supply the goods required by BRB in good time, then the delivery period will be extended accordingly.
- 6.3 Delivery dates or delivery periods will be extended by the duration of any delay on the part of BRB as a result of failure by the Client to comply with any of its obligations under the Contract or to provide its requested assistance in the performance of the Contract.
- 6.4 BRB will determine the way in which the Contract is performed, and by which persons, having regard as far as possible to the wishes of the Client. Each instruction is deemed, to the exclusion of Book 7, Articles 404 and 407 (2) of the Dutch Civil Code, to have been given solely to, and accepted by, BRB.
- 6.5 BRB is entitled to perform the Contract in parts and to claim for payment for such part of the Contract as has been performed. In such a case, each delivery is deemed to be the subject of a separate Contract. However, the failure by BRB to comply with any such separate Contract does not relieve the Client of its obligations under other separate Contracts.
- 6.6 All abbreviations of international commercial terms and conditions of delivery in any contract document are deemed to refer to the Incoterms 2010, or the latest version thereof. Delivery will be made under the agreed terms in accordance with the Incoterms 2010, or the latest version thereof. If no terms are agreed for delivery, then delivery will be ex works. The risk in respect of the products transfers to the Client at the time when delivery is made in accordance with the agreed Incoterm.
- 6.7 In principle, the transport and insurance costs are the responsibility and risk of the Client unless expressly agreed otherwise in a delivery term in accordance with the Incoterms.



# BRB

- 6.8 The Client must insure the goods from the moment of delivery and for the duration of the retention of title against fire, explosion, water, and other damage, and against theft, and provide BRB with sight of these insurance policies on request. All claims by the Client against the insurers of the goods under such policies must be transferred to BRB if and as soon as BRB so requires.
- 6.9 The Client must take receipt of the goods as soon as they arrive at the point of delivery. The Client must ensure adequate loading and unloading facilities and a rapid unloading.
- 6.10 The loading and unloading of goods and their packaging is at the expense and risk of the Client, even if BRB assists the Client in this regard. The Client indemnifies BRB against any third-party claim, including a claim made by its own personnel in regard to the transportation.
- 6.11 If the Client does not take receipt of the goods or does not ensure that they are collected, they will be stored by BRB for as long as BRB deems necessary or desirable, at the expense and risk of the Client. In such a case, and where the Client is in any other kind of attributable breach, BRB is entitled at any time either to require compliance with the Contract, or to terminate the Contract (without the need for a court order), as it may choose, and without prejudice to its other rights to claim compensation for loss, including loss of profits and the cost of storage.
- 6.12 BRB is not obliged to comply with a request from the Client for re-delivery or later delivery. If BRB does agree to this, the costs thereby incurred are payable by the Client.

## **7 Force majeure**

- 7.1 BRB cannot be held liable for the consequences of failure to comply with any contract term if and insofar as compliance is delayed, complicated, restricted, or obstructed by a situation outside the scope of its responsibility and risk ('force majeure').
- 7.2 The term 'force majeure' includes, but is not limited to: war, threat of war, terrorist act, sabotage, accident, epidemic, mobilisation, civil unrest, civil war, riot, violence, fire, natural disaster, strike or work stoppage, breakdown in the supply of energy or materials, the failure of suppliers to supply on time or at all, the injury or illness of personnel, disruption in business, breakdown, import/export restrictions or other governmental restrictions, lack of means of transport, obstruction in transport, vital repair or maintenance, limited or no availability of labour / raw materials / half-finished goods / ancillary materials / packaging / transport materials, or a breakdown in, or shortage of, public facilities.



# BRB

- 7.3 In the event of force majeure, BRB is entitled to suspend performance of the part of the Contract that cannot be performed for a period of up to three months. If force majeure continues beyond the period of three months, or if and insofar as it is already clearly established that compliance will continue to be impossible due to force majeure, BRB is entitled to terminate the part of the Contract that cannot be performed by written notice to that effect, without thereby incurring any liability to the Client.
- 7.4 If when force majeure occurs BRB has already fulfilled part of its obligations or can only fulfil part of its obligations, the Client must pay a proportionate part of the total price for this performance as though it were a separate Contract.
- 7.5 The Client may not rely on Book 6 Article 265 (2) of the Dutch Civil Code.

## **8 Inspection and compliance with specifications**

- 8.1 To mitigate any loss, the Client should inspect the goods for any defects prior to their use, processing, transport, storage or sale ('the Application') to ascertain that the delivered goods comply with all contractual requirements ('the Specifications'). The Application of the products without prior inspection constitutes unconditional acceptance of the products, such that the right to bring any claim alleging any defect to such goods will be lost.

Application of the products must comply with legislation and regulations that apply in the location of their destination, and is at the expense and risk of the Client. The Client must ascertain and ensure that the packaging, user information, and/or labelling complies with government regulations applying in the country of destination. The Client indemnifies BRB against all claims arising from failure to comply properly or at all with these provisions.

- 8.2 Any complaint about the products must be in writing and must have been received by BRB within two days following the delivery date in respect of a defect, breach, or deficiency that could be identified by a reasonable inspection of the products on delivery, and no later than two days after the date on which all other defects were discovered or could have been discovered, and in any event no later than three months after receipt of the products, failing which the right to any remedy is lost.



# BRB

- 8.3 If when the Client checks the quality of the products it notices discrepancies, it must immediately notify BRB in writing of this fact, indicating the results of the analysis and preserving the sample or samples used for the analysis. The Client must take three new samples and make these available to BRB. BRB is entitled to have samples taken from the Client by an independent third party and to have these analysed. The cost of taking and analysing these samples will be borne by the party whose position is proved to be wrong.
- 8.4 Establishing whether at the time of their delivery the delivered products meet the Specifications is achieved solely by carrying out an analysis in accordance with the relevant law or using methods applicable to the Contract.
- 8.5 Except as provided for by section 3, any samples supplied to the Client are supplied solely for information purposes and imply in no way any explicit or implicit conditions or guarantees of any kind whatsoever concerning, for example, quality, description, saleability, or suitability for a certain purpose, and the Client is deemed to have sufficiently investigated these matters before ordering the products.
- 8.6 A defect in an identifiable part of the delivered products does not give the Client the right to refuse to purchase the entire delivery of the products. A complaint does not relieve the Client of its payment obligations as defined in Article 13. Upon receipt of a notice of a defect, BRB is entitled to suspend further deliveries until the cause of the complaint has been established or until the defect has been fully rectified.
- 8.7 The Client must not return delivered goods to BRB without the prior written consent of BRB.
- 8.8 Transport and other costs incurred in returning goods are the liability of the Client unless and insofar as, having inspected the goods, BRB acknowledges liability for any defect to them.
- 8.9 If it discovers any deficiency in the goods supplied or work carried out, the Client must take all possible steps to prevent or restrict loss, or further loss, including ceasing to use, process, re-process, or trade in the goods or work.





8.10 Any breach of the provisions of this article will lead to the Client forfeiting any right to complain. If the Client acts in breach of generally accepted or prescribed measures, or fails to comply properly, in time, or at all with any obligation to BRB under the Contract, the Client also forfeits a right to complain.

8.11 The Client has no right to suspend its payment obligations in the event that it exercises its right to complain.

## **9 Limited guarantee**

9.1 Article 4 of these General Conditions is deemed to be incorporated here in full.

9.2 If and insofar as pursuant to Article 8 of these General Conditions it is established that certain products do not meet the Specifications, then within a reasonable period BRB can either replace the defective goods free of charge, or credit the value of those goods in part or in full as at their original invoice price, at its discretion. The products are only suitable for use in accordance with the product information supplied by BRB.

9.3 Where a Contract pertains to a part of the delivered goods or work carried out that are defective, such Contract shall remain fully enforceable as regards the goods or work that are not defective.

## **10 Retention of title**

10.1 All goods delivered or to be delivered remain the property of BRB until all claims of BRB against the Client, including future claims, such as, but not limited to, the claims referred to in Book 3 Article 92 (2) of the Dutch Civil Code, have been paid in full.

10.2 Until title to the goods has transferred to the Client, the Client is not permitted to pledge, dispose of, process/incorporate, or grant any other right to any third party in respect of, those goods. The Client undertakes to assist BRB on demand in the creation of a right of pledge on the claims that the Client acquires at any time as a result of the onward delivery of the goods to the Client's purchasers. If the Client grants credit to any third party in this regard, it must stipulate a retention of title as against such third parties in a written contract on the basis of the provisions of this article.



# BRB

- 10.3 The Client must treat goods delivered under a retention of title with the required duty of care and identify them as being the property of BRB.
- 10.4 BRB is entitled to recover from the Client at the Client's risk and expense goods still in the possession of the Client that are subject to the retention of title if the Client is in breach of its payment obligations or is in difficulty with making payment or such difficulty is a possibility. The Client must provide BRB at all times with free access to its land and buildings to inspect the goods and/or to exercise its rights.
- 10.5 Products found on the Client's premises of the type supplied by BRB to the Client are presumed to be the property of BRB until such time as the Client has met its payment obligations to BRB (purchase price, interest, and costs).
- 10.6 The property-law consequences of the retention of title are also governed by the law applying at the time of delivery of the goods subject to the retention of title in the place where such goods are kept. The term 'time of delivery' means the time at which the Client has control over the goods, having regard also to the provisions of Article 6 of these General Conditions. The retention of title also applies to goods produced from the goods subject to the retention of title.
- 10.7 If a third-party attachment order is secured against the Client's property and on goods subject to a retention of title, or in the event of a moratorium and/or the insolvency of the Client, the Client must immediately notify the receiver or bailiff securing the attachment order of the fact of the retention of title. The Client must then take all necessary steps to ensure that such an attachment order is lifted.
- 10.8 If the rights under the retention of title cannot be exercised for any reason whatsoever, or in the event of any other attributable breach by the Client, BRB is entitled at any time to choose either to require compliance with the terms of the Contract or to terminate the Contract without the need for a court order, in either case without prejudice to its rights to claim compensation for loss, including loss of profits, storage costs, transport, customs duties, etc.
- 10.9 The Client has no lien on the goods supplied by BRB.



# BRB

10.10 Article 18.1 of these General Conditions is deemed to be incorporated here in full.

10.11 Some countries have their own / specific retention of title as, for example, set out in the addendum to these General Conditions, that applies to the exclusion of, or additional to, the retention of title set out above.

10.12 The said provisions are without prejudice to the other rights of BRB.

## **11 Pledge**

11.1 In respect of delivered goods the ownership of which has passed to the Client following payment and which are still in the possession of the Client, BRB retains now for such future occasion a non-possessory pledge as security for any claims that BRB may have against the Client for whatever reason. The Contract between BRB and the Client constitutes a deed of pledge as defined by Book 3 Article 237 of the Dutch Civil Code.

11.2 The Client has no lien in respect of products supplied by BRB enforceable against BRB.

11.3 BRB has a right of pledge and a lien on all goods, documents, and moneys in the possession of BRB at any time and under whatever title, in respect of all claims that it may have at any time against the Client. BRB has a right of pledge and a lien against any party that requires the handing over of goods, documents, or moneys.

11.4 BRB may also exercise the rights set out in this article in respect of the continuing liability of the Client to BRB in connection with the above, and/or orders already supplied.

## **12 Consultancy**

12.1 If and insofar as the Contract also includes the supply of support and advice to the Client by BRB, the provisions of Article 12 of these General Conditions apply. In the event of any conflict with the other provisions, the provisions of Articles 12.1 to 12.4 take precedence.

12.2 The instructions to provide support and advice impose upon BRB no more than a best-efforts obligation. There is no guarantee that any desired result will be achieved.



# BRB

12.3 Advice given by BRB is intended solely for the Client. No third party may derive any rights from advice given by BRB.

12.4 The Client is not permitted to disclose or make available to any third party the content of advice and other written or oral information supplied by BRB without the prior written consent of BRB.

## 13 Payment

13.1 All payments must be made within thirty days of the invoice date unless agreed otherwise, in the currency specified on the invoice, and by transfer to the bank account number stipulated by BRB, unless BRB stipulates a different method of payment. BRB is entitled to require payment in advance of all or part of the sum due, or some form of guarantee for payment.

13.2 BRB is entitled to invoice separately for part deliveries.

13.3 If payment is not made in time, the Client is automatically in breach by virtue of such late payment alone. In such a case, interest is payable on the sum invoiced at the rate of 1% per month, calculated as from the final date for payment up to and including the date on which payment is made, whereby a part month is deemed to be a whole month for the purposes of such calculation.

13.4 If payment is not made on time, the Client is liable for extrajudicial enforcement and other costs. Extrajudicial enforcement costs are fixed at 15% of the debt to be enforced, or €250, excluding VAT, whichever is more.

13.5 The Client waives any right to set off and/or suspension in respect of sums owed by either party to the other.

13.6 BRB is entitled to set off all its liability to the Client against the liability at any time of the Client and/or any associated enterprises of the Client to BRB, whether or not due and payable, conditional, or time limited.

13.7 The full amount invoiced becomes immediately due and payable if payment is not made by the final date of an agreed payment period, or if the Client becomes insolvent, applies for a full or provisional moratorium, is made subject to a debt rescheduling arrangement under the Natural Persons Debt Rescheduling Act (*wet schuldsanering natuurlijke personen*), if an application is made to place the Client in receivership, if any attachment order is secured upon the goods or claims of the Client, if the Client dies, or goes into liquidation, or the Client's business is wound up. If any such situation arises, the Client must immediately notify BRB of this fact.



# BRB

13.8 Payments made by the Client will first be applied to clear any liability for costs, then any accrued interest, and finally to clear the principal sums invoiced, beginning with the oldest debt, even if the Client stipulates that the payment is to be used to clear a more recent invoice or other liability.

13.9 On demand by BRB, the Client must provide payment guarantees or security for payment of the purchase prices owed by the Client to BRB (including interest and costs), in respect of goods delivered by, or to be delivered by, BRB to the Client pursuant to confirmation of an order.

## **14 Termination**

14.1 Unless agreed otherwise in writing, BRB is entitled to terminate all or any part of the Contract at any time, without the need to give a reason, and with immediate effect. In such a case, BRB is not liable for any loss suffered by the Client as a result of the termination.

14.2 The Client has no right to terminate. If and insofar as the Client is in breach of this provision by terminating all or any part of the Contract, it becomes liable for all loss thereby incurred by BRB, including, but not limited to, costs, work carried out by BRB, and loss of profits, plus turnover tax thereon.

14.3 If the Client terminates the Contract in breach of this article, it is immediately liable to pay a penalty of 50% of sums invoiced and to be invoiced, being not less than €10,000, without prejudice to the right of BRB to claim compensation for the full extent of its loss.

## **15 Limitation of liability**

15.1 Apart from its obligation to replace or give credit for goods as set out in Article 9.2 of these General Conditions, under no circumstances is BRB liable to the Client or any other natural person or legal entity for any other or additional liability including direct, special or commercial loss, or indirect or consequential loss (such as loss of turnover, financial loss, loss due to delays, loss of goodwill, or damage to reputation).



# BRB

- 15.2 BRB is not liable for any sum greater than the amounts invoiced that are paid by the Client to BRB in respect of defective products, plus transport costs if these were incurred by the Client, and such liability will not exceed the amount that is paid out under any liability insurance policy taken out by BRB.
- 15.3 BRB is not liable for loss caused by its employee or any third party it engages, except in the case of deliberate act or gross negligence on the part of BRB.
- 15.4 BRB is not liable for loss caused by advice, recommendations or consultancy work as described in Article 12 that is supplied to the Client. The Client indemnifies BRB for any third-party claims in the widest interpretation of these words.
- 15.5 Loss resulting from damaged or destroyed packaging is at the expense and risk of the Client.
- 15.6 If on the basis of facts or circumstances known by BRB at that particular time BRB exercises a right to suspend or terminate the Contract, even though it is later irrevocably proved that such right was not validly exercised, BRB is not liable for this and not obliged to pay any compensation for loss, except in the case of a deliberate act or gross negligence on its part.
- 15.7 The Client waives, and will indemnify BRB in respect of, any claim in the widest interpretation of this term, insofar as such claim exceeds the amount invoiced or the amount insured. The Client will compensate, defend, and indemnify BRB and its associated enterprises, directors, managers, and employees in respect of claims howsoever arising, and against any costs or expenses, including reasonable legal costs, attorneys' fees, and other costs incurred in resolving disputes, in respect of the physical injury, sickness, or death of any person, or damage to property or the environment, resulting from or connected with the unloading, storage, handling, purchase, use, sale, or disposal of a product by the Client.
- 15.8 The Client accepts liability for loss resulting from the application of the products. The Client will indemnify and compensate BRB in respect of all loss and costs arising from or connected with the Client's Application and/or the use by the Client of information shared or supplied by or on behalf of BRB. The Client indemnifies BRB against any third-party claim in the widest interpretation of such terms.



# BRB

15.9 Without prejudice to the provisions of Article 9 of these General Conditions, any claim in court by the Client will be inadmissible unless (i) the Client has first notified BRB in writing of an alleged claim against BRB within 30 days of the situation to which the complaint relates first becoming known to the Client, and (ii) any court proceedings are actually issued by the Client against BRB within twelve months following this said written notice.

15.10 The Client indemnifies BRB, its employees, and any third party it engages against any third-party claim, including a product liability claim, related to the performance of the Contract and/or any negligent act by BRB, irrespective of the cause, and against any costs for which BRB is thereby held liable.

15.11 BRB is not liable for:

- products delivered in connection with applications for silicone implants;
- loss suffered by a third party caused by, or a consequence of, or connected with, products delivered in connection with applications for silicone implants;
- products supplied directly to the animal feed industry;
- loss suffered by a third party caused by, or a consequence of, or connected with, supplies to the animal feed industry;
- claims arising from errors, defects and/or negligence relating to designs, calculations or advice;
- claims arising from loss caused by or in connection with asbestos, foam and resins, or formaldehyde;
- pure financial loss;
- product recall costs;
- product guarantee, with the exception of the provisions in Article 4.2 and 9;
- environmental contamination and any long-term effects thereof including contamination and/or harm to the soil, air, or water, including in the case of a sudden and uncertain situation;
- punitive and/or exemplary damages, or treble damages;
- industrial diseases, employers liability en employees' compensation;
- motor vehicle liability;
- toxic mould, latex, silica and welding rods;
- risk of terrorism.



## **16 Intellectual property rights**

16.1 All intellectual and industrial property rights pertaining to the goods and their configuration, and to goods that BRB develops or uses in the performance of the Contract, whether or not as instructed by, or at the expense of, the Client, accrue to BRB, except insofar as they belong to any third party or there is written agreement otherwise. Such rights apply to goods including, but not limited to, drawings, calculations, descriptions, models, tools, systems, software, equipment, methods, inventions, ancillary materials, formulae, and product processes produced or supplied by BRB.

16.2 No part of the drawings, calculations, software, equipment, working methods, inventions, and other items listed in section 1 of this article may be copied, published, or shown or supplied to any third party, without the written consent of BRB. The term 'third party' here includes all persons employed within the organisation of the Client who do not necessarily require access to the relevant items.

16.3 The Client is not permitted to remove or alter any reference to copyright, trademark rights, trading names or other intellectual or industrial property rights on drawings, calculations, descriptions, models, tools, systems, software, equipment, working methods, inventions, formulae, production processes, or other goods, including references to the confidential nature of such items and the secrecy thereof.

16.4 BRB has not investigated any possible third-party intellectual property rights which could be infringed by the sale and supply of the products, and BRB cannot be held liable for any loss (or compensation) in the event of any such infringement.

16.5 No licence in respect of intellectual property rights protecting the composition or application of the products can be inferred from the sale or supply of such products, and the Client expressly accepts all risks associated with a possible infringement of intellectual property rights arising from the import and/or application of the products.

## **17 Representation**

If the Client acts on behalf of one or more third parties, it remains nevertheless fully liable to BRB as if it were itself the ultimate client.





# BRB

## 18 General provisions

- 18.1 If and insofar as any provision of these General Conditions is partly or entirely void, voidable, invalid, or unenforceable under current legislation, the other provisions will remain fully binding and enforceable as between the parties to the Contract. Any void, voidable, invalid, or unenforceable provision will be replaced by a comparable provision on the basis of Dutch law, having regard to the content, purpose, and scope of the void or voidable provision. Any void, voidable, invalid, impermissible, or unenforceable provision relating to collateral security (including, but not limited to, a pledge, lien, or retention of title) will be replaced by comparable provision on the basis of the law of the country in whose territory the goods are located, having regard to the content, purpose, and scope of the void, voidable, impermissible, or unenforceable provision.
- 18.2 The headings to articles, sections, parts, and paragraphs of the Contract and these General Conditions are for ease of reference only and have no force of law. They do not define, limit, or describe in any way the nature, scope, and extent of the relevant article, section, part, or paragraph.
- 18.3 Offers, contracts, and successive contracts, and the performance thereof by BRB, are governed by the most recent version of the General Conditions of BRB to have been filed with the Netherlands Chamber of Commerce.
- 18.4 Any dispute between BRB and the Client will be determined exclusively by the Court of Limburg, for the district of Roermond, the Netherlands, without prejudice to the right of BRB either (i) to bring the dispute before the court with jurisdiction for the relevant business address of BRB in a foreign country, or (ii) to submit the dispute to arbitration proceedings in accordance with the Arbitration Rules of the International Chamber of Commerce (ICC) before one or more arbitrators appointed in accordance with such Rules, (to be conducted in English, with the hearing to take place in Maastricht), and the parties hereby agree to the jurisdiction of such court or, if BRB so elects, of such arbitrators, and hereby waive any objection they may have at any time in the future to such forums for the resolution of any such dispute.
- 18.5 All Contracts entered into by BRB are governed by Dutch law. The application of the United Nations Convention on Contracts for the International Sale of Goods (The Vienna Sales Convention) to all Contracts to which BRB is a party is hereby expressly excluded.



# BRB

18.6 In the event of any dispute concerning the interpretation of these General Conditions, the interpretation of the Dutch version hereof is binding.



# BRB

## **Addendum:**

### **Special conditions governing retention of title abroad**

This addendum applies only to the countries listed below and is therefore not a complete list. The other provisions of these General Conditions remain fully enforceable.

#### Retention of title in Germany

Das Eigentum an den gelieferten Waren bleibt zur Sicherung aller Ansprüche vorbehalten, die uns aus der gegenwärtigen und künftigen Geschäftsverbindung bis zum Ausgleich aller Salden gegen den Abnehmer und seine Konzerngesellschaften zustehen. Unser Eigentum erstreckt sich auf die durch Verarbeitung der Vorbehaltsware entstehende neue Sache. Der Abnehmer stellt die neue Sache unter Ausschluss des eigenen Eigentumserwerbs für uns her und verwahrt sie für uns. Hieraus erwachsen ihm keine Ansprüche gegen uns. Bei einer Verarbeitung unserer Vorbehaltsware mit Waren anderer Lieferanten, deren Eigentumsrechte sich ebenfalls an der neuen Sache fortsetzen, erwerben wir zusammen mit diesen Lieferanten – unter Ausschluss eines Miteigentumserwerbs des Abnehmers - Miteigentum an der neuen Sache, wobei unser Miteigentumsanteil dem Verhältnis des Rechnungswertes unserer Vorbehaltsware zu dem Gesamtrechnungswert aller mitverarbeiteten Vorbehaltswaren. Der Abnehmer tritt bereits jetzt seine Forderungen aus der Veräußerung von Vorbehaltsware aus unseren gegenwärtigen und künftigen

Warenlieferungen mit sämtlichen Nebenrechten im Umfang unseres Eigentumsanteils zur Sicherung an uns ab. Bei Verarbeitung im Rahmen eines Werksvertrages wird die Werklohnforderung in Höhe des anteiligen Betrages unserer Rechnung für die mitverarbeitete Vorbehaltsware schon jetzt an uns abgetreten. Solange der Abnehmer seinen Verpflichtungen aus der Geschäftsverbindung an uns ordnungsgemäß nachkommt, darf er über die in unserem Eigentum stehende Ware im ordentlichen Geschäftsgang verfügen und die an uns abgetretenen Forderungen selbst einziehen. Bei Zahlungsverzug oder begründeten Zweifeln an der Zahlungsfähigkeit oder Kreditwürdigkeit des Abnehmers sind wir berechtigt, die abgetretenen Forderungen einzuziehen und die Vorbehaltsware zurückzunehmen.

Scheck-/Wechselzahlungen gelten erst nach Einlösung der Wechsel durch den Abnehmer als Erfüllung. Hinsichtlich der Vereinbarung von Eigentumsvorbehaltsrechten gilt ausschließlich deutsches Recht.



# BRB

Retention of title in France:

La propriété des biens délivrés ne sera transférée qu'au moment du paiement intégral du prix.

Retention of title in Belgium:

Ownership of the goods delivered does not transfer until payment for the goods has been made in full, or, in French: La propriété des biens délivrés ne sera transférée qu'au moment du paiement intégral du prix.

Retention of title in the United Kingdom:

BRB remains the owner of all goods supplied to the Client until such time as payment has been received in full from the Client. The goods shall remain the property of BRB and the Client shall store them so that they are readily identifiable as BRB's goods, until such time as payment for them and for all other goods agreed to be sold to the Client has been received in full. If the goods have been resold, BRB's beneficial entitlement shall be attached to the proceeds of the re-sale and will be able to claim the full purchase price of the proceeds received. Where ownership of any goods remains vested in BRB, then BRB shall be entitled to repossess any goods supplied at any time. BRB may for the purpose of recovering its goods enter upon any premises where they are stored or where they are reasonably thought to be stored and may repossess the same. It is the sole responsibility of the Client to ensure that all goods received from BRB are fully insured against any eventually including, but not limited to, fire, theft, flooding, etc., until such time as ownership of the said goods has passed to the Client. Should goods become damaged in any way after they have been received by the Client, the Client will be liable to pay to BRB the full purchase price of the goods.