



Make or Buy
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GENERAL TERMS AND CONDITIONS 2021

The General Terms And Conditions of Make or Buy B.V. (Make or Buy) are inextricably associated with the agreement with Client.

1. Rates and invoicing.

1.1 All rates quoted are exclusive of VAT.

1.2 Rates as described in the agreement are valid in each case through 31 December of the current calendar year. Make or Buy reserves the right to adjust the rates for its services a maximum of two (2) times per calendar year. The NEA figures and the rate changes of our suppliers are used as the basis for any rate adjustments.

1.3 In the agreement with Client, Make or Buy records agreements with regards to the invoicing and the payment period.

- 1.3.1 Make or Buy shall maintain a proper administration of the information that serves as the basis for the invoiced amounts for six (6) months after the date of invoice.
- 1.3.2 If Client does not agree with the amount invoiced, this must be reported to Make or Buy within the stated payment period. If there is a dispute regarding the amount of the invoice, the payment period remains in effect.

1.4 Make or Buy shall take appropriate measures upon failure to meet the payment obligations.

- 1.4.1 After two (2) requests for payment and a final notice, Make or Buy has the right to suspend all work activities. During the suspension, even if it lasts longer than the term of the agreement, all agreed upon rates remain in effect and are billable.
- 1.4.2 During the suspension, Make or Buy shall charge an interest compensation, which is the statutory commercial interest rate over the outstanding invoice amount including VAT, calculated from the stated payment date.
- 1.4.3 As long as Client does not meet all of its payment obligations, Make or Buy has the right of lien and retention on all goods and documents that Make or Buy has in its possession for Client in the fulfilment of its obligations under this agreement.
- 1.4.4 If Make or Buy decides to transfer to a collection agency the claim of unpaid invoices, all costs and subsequent costs are the responsibility of Client.

2. Goods receipt and Inventory

2.1 Client allows products to be delivered to the address specified by Make or Buy with mention of the company name of Client. For deliveries of five (5) pallets or more, the transporter must agree with Make or Buy on a day and possibly a time of delivery.

- 2.2 Make or Buy can refuse to receive a shipment, for example under the following circumstances:
- Damaged, leaking or opened packages;
 - Unsound packaging or pallet stacking, as determined by Make or Buy;
 - Required payment upon delivery;
 - Unannounced delivery of five (5) or more pallets.

Make or Buy is not liable for the consequences, of any kind whatsoever, of a refused shipment.



2.3 Make or Buy uses the following procedure for deliveries.

- 2.3.1 The packing list of the transporter is examined based on the largest packaging units as reported on the transport documents of the transporter. Make or Buy is not responsible for receiving packaging units of which the receipt has not been accepted (signed).
- 2.3.2 The delivered packaging units are examined for clearly visible external damage. If damage is detected, this is communicated to Client and reported on the transport documents of the transporter. If the damage is not clearly visible or is only noticed later, the damage is reported to Client. In all cases, Make or Buy is not responsible for damage to the products of Client.
- 2.3.3 Incoming goods are counted by Make or Buy. For deliveries of products sorted in an outer protective wrapping, the number as used by the manufacturer on the outer package or accompanying packing note is displayed. The contents are not recounted, unless requested by Client. For deliveries in mixed boxes (assortments), the contents are recounted.
- 2.3.4 If the number of received products is disputed by Client, this must be reported to Make or Buy within two (2) business days of receipt. Other irregularities detected by us, such as receipt of unknown products, will be reported to Client by Make or Buy via e-mail.

2.4 Make or Buy is not responsible for the quality of the delivered goods or differences in inventory of less than 1%, measured as a percentage of the total inventory. With an inventory difference of 1% or more, it must be demonstrated, for potential compensation with regards to liability, that it is caused by the deliberate recklessness of Make or Buy.

2.5 Make or Buy shall store the goods of Client in such a way that damage during disasters is prevented as much as possible. However, Make or Buy cannot be held liable for damage to products or consequential loss, unless Client proves that there is deliberate recklessness on the part of Make or Buy.

2.6 Goods of Client that are in storage at Make or Buy are not normally insured. Insurance is offered as an option at rates and conditions to be determined.

2.7 The Client is responsible for managing the best before dates of its products. And gives Make or Buy instructions when to take products from stock if the best before date requires this. Make or Buy ensures that the Lot and THT data are registered at the time of inbound.

3. Order processing and distribution

3.1 The manner of processing orders and returns, the materials used, and other work activities are defined in the agreement with Client. For other work activities not defined in the agreement, rates and conditions are agreed upon separately.

3.2 Regarding all orders, it is considered that Make or Buy acts with reference to distribution exclusively as a forwarding agent under BW (Civil Code) art. 8:60. The Dutch Forwarding Conditions (Fenex - Dutch Organisation for Forwarding and Logistics) 2018 are applicable to freight forwarding activities, with the exclusion of the arbitration clause, whereby upon application thereof the present conditions in the agreement prevail. In that sense, Make or Buy is not responsible for damage or consequential loss occurring to Client or third parties if such damage is a result of irregularities arising in the supply, transport or delivery of the products from Client.



3.3 Make or Buy is not responsible for damage to or loss of the goods of Client from the moment of transfer of the goods to a transporter such as, for example, but not limited to: parcel service, postal service, transport company or courier, whether or not designated by Make or Buy. The moment of transfer is defined as the moment that the order has the status of 'ready for dispatch' in the computerised system (fulfilmentsystem) used by Make or Buy. For orders that are collected, Make or Buy has a collection receipt be signed by the collecting party.

3.4 In case of damage to or loss of the goods of Client occurring after transfer to a transporter, Make or Buy acts as an intermediary between the transporter and Client with regards to requesting the cause of the damage or loss and initiating an investigation.

- 3.4.1 In case of damage or loss as a result of demonstrable failure of the transporter, Make or Buy shall submit a claim at the request of Client, whereby Client is obligated to provide all reasonable cooperation. Make or Buy is not responsible for whether or not the claim is granted.
- 3.4.2 In case of damage or loss as a result of demonstrable failure of Make or Buy, Make or Buy is responsible for the cost of the replacement value of the goods up to a maximum of € 250 per occurrence.
- 3.4.3 If it cannot be demonstrated that the damage or loss is the result of failure of the transporter or Make or Buy, the damage is not recoverable.

3.5 After transfer to a carrier, goods are not insured for damage and/or loss other than as mentioned in the standard conditions of the transporter, which can be requested by Client. A supplemental insurance can be taken out at the express request of Client and provided that the carrier offers such insurance.

4. Automation

4.1 Make or Buy provides a stable working fulfilmentsystem including the links realised and customised solutions made for Client by Make or Buy.

- 4.1.1 In the case of updates of the software used by Client, whereby the update is or can influence the links on the API realised by Make or Buy, Client is obligated to request this of Make or Buy a minimum of five (5) business days prior to the planned update. Make or Buy is not liable for damage as a consequence of unannounced software updates.
- 4.1.2 In special cases, Make or Buy will allow a link to be realised by Client, but under strict control of Make or Buy and with specific, agreed upon conditions.



4.2 Support and customer service.

For questions of an operational nature and about the customer portal, Client must approach the Make or Buy employees in the warehouse via regular customer service during office hours.

For technical questions and reports of malfunctions in the systems and therefore the links and customised solutions realised by Make or Buy, Make or Buy has an IT Support department.

- 4.2.1 IT Support activities are included in the monthly rates for use of the systems of Make or Buy, insofar as mentioned in the agreement, if they are related to:
- a. maintenance and management of the realised links and customised solutions;
 - b. malfunctions insofar as caused on the side of the systems of Make or Buy, the links realised by Make or Buy, or customised solutions;
 - c. (re)design of the links realised by Make or Buy after an update of the software of Client's systems insofar as it is in regards to a generic update of standard and generally available webshop software;
 - d. functional explanation of the fulfilmentsystem, the links realised by Make or Buy, and customised solutions;
 - e. explanation of additional functionalities of the fulfilmentsystem, available links, or customised possibilities.

- 4.2.2 IT Support activities at the request of Client in all other cases than those mentioned in Article 4.2.1 are not included in the rates and are charged based on an hourly rate. The number of invoiced hours is based on registration in a ticket system of all requests made by Client via e-mail to support@makeorbuy.nl or directly by telephone with IT Support.

These include – but are not limited to – the following activities:

- a. answering questions about and/or offering a solution for a malfunction or incorrect hand-off of information of which the cause appears to lie outside the systems of Make or Buy, the links realised by Make or Buy, or customised solutions;
- b. support with the (re)design of Client's software with regards to the functionalities offered by Make or Buy in the links and systems;
- c. support, maintenance, redesign after updates or resolving of malfunctions, occurring at or as a result of links developed by Client as intended in Article 4.1.2;
- d. links or other activities after an update on the side of Client with regards to customised solutions, links developed by Client, or other software used by Client insofar as not included under the webshop software as intended in Article 4.2.1.c;
- e. corrective activities with regards to not correctly following instructions of Make or Buy with an update on the side of Client, or with changes executed by Make or Buy in the links or customised solutions realised by Make or Buy;
- f. activities as a result of Client making changes in or additions to the software or systems used by Client without there having been a consultation with Make or Buy.

- 4.2.3 Questions to customer service are included in the rates where reasonable.



4.4 IT Support shall handle malfunctions in the fulfilmentsystem, the links realised by Make or Buy, and the customised work for Client within a period that is appropriate for the seriousness and impact of the malfunction. The term within which a solution is available depends on the nature of the problem. If the problem hinders a proper order processing within the agreed upon Service Level Agreement, an attempt shall be made to offer an appropriate alternative from among the available possibilities. For the structural solution of the malfunction at hand, Make or Buy and Client shall discuss possible adjustments to the link and the resulting associated costs.

4.5 Client can request IT Support to create customised solutions for existing or new functionalities in the systems, links or other IT services of Make or Buy. In these cases, the cost will be calculated based on quotation.

5. Liability

5.1 Make or Buy is not liable for damage of any cause whatsoever occurring to Client or third parties that is related to the goods delivered or services provided by Make or Buy, including damage to the goods themselves, and that exceeds the invoiced value of the delivered good or the provided service whereby the alleged damage occurred.

5.2 Make or Buy offers to Client the opportunity to make use of the services of cooperative partners of Make or Buy. Client itself enters into a contract with such a cooperative partner. Make or Buy can never be held liable for (indirect) damage occurring from or as a result of an offer made by a cooperative partner and/or the agreement entered into within that framework and/or the delivered services of the cooperative partner.

5.3 Make or Buy is not liable for damage, consequential loss or costs of any cause whatsoever occurring to Client or to third parties which exists as a result of defects in, or failure of, the fulfilmentsystem used by Make or Buy and the links or customised solutions realised by Make or Buy.

5.4 In the case of force majeure, Make or Buy is entitled to cancel or suspend any order.

5.4.1 If the force majeure is, in the opinion of Make or Buy, of a temporary nature then Make or Buy has the right to suspend its activities until the force majeure has been lifted. Client is not entitled in such a case to annul the agreement.

5.4.2 If Make or Buy is of the opinion that the force majeure is of a permanent nature, Make or Buy shall communicate such in writing to the Client and the agreement will be annulled as a result of the written notice without legal recourse.

5.4.3 Force majeure includes – but is not limited to – the following: fire, failure of electricity or internet connection, failure of equipment or network, weather conditions, work strikes, the unavailability and/or stagnation in the supply and/or obstruction in the transport of the goods and other obstructions, occurring both outside of and within the company.

5.4.4 In the case of cancellation or suspension as referred to above, Client cannot claim any damage compensation.



6. Termination

6.1 Upon suspension as intended in Article 1.4, Make or Buy has the right to unilaterally terminate the agreement at any time during the suspension, immediately and without notice, without being liable for any form of damages caused to Client or third parties.

6.2 If Client enters into suspension of payment or bankruptcy, Make or Buy has the right to unilaterally terminate the agreement, immediately and without notice. The agreed upon rates for storage and other fixed costs remain in effect and billable as from that moment. As long as Client or its legal representative has not satisfied all existing and current, yet to be invoiced, payment obligations, Make or Buy has the right of lien and retention on the goods of Client.

6.3 In all cases of termination of the agreement, Make or Buy shall pass on the costs that are incurred to ready the remaining inventory of Client for dispatch, as well as all materials used for such, to Client. Any costs for transport of the remaining inventory to an address specified by Client will also be passed on. All of these costs will be, together with the provided services yet to be billed, immediately invoiced based on the agreement or as a result of separate agreements, when the remaining inventory is ready for dispatch. Before the goods are to be dispatched to or collected by or on behalf of Client, all outstanding invoices must be paid. If Client does not wish to take back the remaining inventory or if the remaining inventory is not requested by Client or its legal representative(s) within six (6) months after dispatch of the last order, Make or Buy reserves the right to destroy or dispose of the inventory, whereupon the proceeds shall be for the benefit Make or Buy.

6.4 If Make or Buy enters suspension of payment or bankruptcy or voluntarily closes its business, the actual and current inventory of Client is immediately due and payable provided the current payment obligations have been satisfied.

7. Disputes

7.1 This agreement is governed by Dutch law.

7.2 Any disputes with regards to an agreement entered into or with regards to these general terms and conditions will be handled by the court in Den Bosch, the Netherlands.

8. Exchange of documents

8.1 If parties exchange personal data reciprocally, they guarantee to each other that the applicable laws and regulations (including the General Data Protection Regulation) pertaining to the protection of personal privacy of the customers of Client are satisfied with respect to this personal data, and that the provision and processing of the aforementioned data by the other party is permitted under these regulations. The providing Party indemnifies the receiving Party for claims of third parties which may develop as a consequence of the fact that the aforementioned regulations are not satisfied.

8.2 Make or Buy ensures that it has taken suitable technical and organisational measures to safeguard the personal data of customers of Client against loss of any form as a result of unlawful processing. These measures are focused in part on preventing the unnecessary collection and additional processing of personal data.

8.3 Parties agree to establish, in a data processing agreement, additional agreements concerning the exchange of personal data. This data processing agreement shall be drafted by Client and signed by Make or Buy at the first request of Client.



9. Confidentiality

9.1 If and to the extent that confidential information of one of the parties comes to the attention of the other party in the performance of the agreement, the other party shall use this information solely for the performance of the agreement and shall limit access to the information by third parties who must take note of this information for that purpose. Parties guarantee that third parties shall be obligated to maintain the confidentiality of the confidential information.

9.2 Parties are mutually obligated to not divulge, in any manner whatsoever, confidential information – including but not limited to product, market, competitor, client and company data which concern the other party – to third parties, unless this information, which is not a result of the confidentiality obligation in question being violated, is considered general knowledge. Parties shall use this information exclusively for the performance of their respective contractual obligations.

9.3 A Party shall only make a statement about the contents of the agreement to third parties if prior written consent from the other party is received for this purpose.

10. Other

10.1 This agreement and its associated attachments form the entire agreement between the Parties with respect to the subject of this agreement and they replace all previous oral or written agreements, contracts, arrangements and statements between the Parties with respect to the subject of the agreement. Oral statements, commitments or arrangements have no legal force unless these have been confirmed electronically or in writing by the authorised representatives of the Parties. General delivery or payment conditions or other general or special conditions of Parties and/or third parties, other than those which have been specified in this agreement, are not applicable to the agreement.

10.2 Obligations which, based on their nature, are intended to continue after termination of the agreement shall remain in force, in any form whatsoever, after termination of the agreement.

10.3 Unless explicitly agreed otherwise in writing, Make or Buy is not entitled to object to or to transfer to a third party one or more of its rights and/or obligations under the agreement.

10.4 Deviations from and/or additions to the agreement are initially valid if and to the extent they are agreed in writing between Parties and the arrangements are signed by the authorised representatives of the Parties. In the interest of completeness: quotations and such do not fall under this article and can be accepted by e-mail.

10.5 In the implementation of the agreement, Parties shall at all times take into account the legitimate (business) interests of the other party and shall refrain from behaviours which can harm the other party in a tangible or intangible manner.

10.6 Regardless whether the agreement is actually implemented, each of the parties shall bear all costs which have arisen on its part in connection with the preparation and the termination of the agreement.

10.7 If any provision of the agreement is, in the judgement of the competent court, invalid or unenforceable, the other provisions shall remain in full force. Parties shall negotiate in good faith and attempt to reach an agreement on an alternative enforceable provision in order to replace the provision which is designated as invalid or unenforceable.