

General Terms and Conditions of ABAC Holland

General

User Terms and Conditions

These terms and conditions are applied by the incorporated companies operating under a trade name of which "ABAC Holland" is the characteristic constituent part. These terms and conditions shall in any case apply to all offers of and agreements with the company or companies referred to above. These companies will hereinafter in each case be referred to as ABAC.

ABAC is a private company with limited liability, whose activities focus on procurement/sales of crop protection products and synthetic fertilisers, procurement/sales of equipment and machinery to be used in the agricultural industry, as well as procurement and sales of packaging materials. In addition, ABAC Holland organises training camps, training programmes and courses and gives advice on applying for and obtaining grants relating to the handling of the goods it supplies.

The party to whom ABAC makes an offer or with whom it enters into a contract, will - irrespective of his or her capacity - hereinafter be referred to as "the other party".

Definitions

Products and materials to be supplied, services to be provided, orders to be carried out, training programmes or courses or advice to be provided by ABAC will in these terms and conditions be referred to as "products" or "products supplied".

"Delivery" is defined as placing one or more items in the possession of or under the control of the other party, as well as delivering a performance under a contract to perform services.

Education, course or training is defined as a lesson or series of successive lessons according to a certain plan, and form a coherent whole; the collective term for this will be referred to as "course" or "courses".

"Parties" shall hereinafter be understood to mean ABAC and other party jointly.

Applicability

If any provision or part of any provision of these terms and conditions is contrary to an applicable legal provision, in the Netherlands or in the country where the other party has its registered office, a (European) directive, applicable international treaty, or is considered as unreasonably onerous, only the relevant provision or part of such a provision shall not be applicable. In that particular case, all the other provisions in these terms and conditions shall remain fully applicable and in force between the parties.

ARTICLE 1: Formation of the agreement:

All offers made by or on behalf of ABAC shall be completely without obligation.

Offers made by ABAC shall be valid for a month, unless explicitly stated otherwise.

ABAC reserves the right to be considered not bound by an agreement directly made by the other party with a staff member of ABAC. Where appropriate, the other party may request ABAC to explicitly express its opinion on whether or not it is bound by such an agreement.

ABAC has the right to subject the binding force of an agreement to the receipt of a copy of the relevant offer signed by the other party. In the event that the agreement to be entered into concerns a course, ABAC may make the formation of a relevant agreement subject to the receipt of a signed registration form and payment of the amount due in respect of the course to be provided.

An agreement is formed if any other party places an order with ABAC, and the order is confirmed by ABAC to the other party.

Agreements are also formed if ABAC, without prior confirmation of the order, carries out, in full or in part, an order placed by any other party.

The other party shall bear the risk of errors and mistakes in the case of an order with ABAC not placed in writing or in the case of a written order or agreement that is unclear or that can be construed in two ways.

If an agreement has been entered into between ABAC and two or more other parties, these other parties shall each be jointly and severally liable towards ABAC for the fulfilment of their obligations arising from the contract.

ARTICLE 2: Prices, transport and delivery:

All prices are exclusive of VAT unless deliveries will take place abroad or if no VAT is payable for any other reason. If the other party does not agree with an invoice sent by ABAC, this should be made known to ABAC by the other party within 14 days of the invoice date.

If price-increasing factors arise after the date of the offer, ABAC shall be entitled to charge these factors to the other party in the price quoted or agreed to. In this case, the other party shall have the right to cancel - without being obligated to pay any compensation - the agreement, provided this is done within one week after notification of ABAC with respect to the price increase. Even then, ABAC shall have the right to reduce the prices to the original level, following which the other party is obligated to fulfil the original conditions of the agreement.

ABAC Holland B.V. shall determine the method of delivery and transportation. Transport need not be carried out further than to a location a truck can access in a safe manner.

From the moment of delivery the items shall be at the risk of the other party. The moment of delivery is the moment at which the items have been placed under control of the other party, or delivered by ABAC at a third party on behalf of the other party, or the moment that ABAC has made it known to the other party that the items can be delivered to the other party, but the items continue to remain at ABAC, for whatever reason.

ABAC is free to deliver divisible orders into two or more parts. If, for whatever reason, the other party is not able to receive the goods at the agreed time and they are ready for shipment, ABAC, provided its storage capabilities allow this, at the request of the other party, shall keep the items in storage at the risk of the other party until they are delivered at the other party. In that case, the other party shall be obligated to pay ABAC the actually incurred costs from the moment delivery could first have taken place.

An agreed delivery time or delivery date is not final, unless expressly agreed otherwise or this is undeniably evident from the nature of the agreement.

Unless otherwise agreed, failing to meet a delivery deadline shall not give the other party a right to compensation.

Amendment to an agreement with ABAC already signed by the other party may cause an originally agreed delivery date or delivery period to be exceeded. In that case, ABAC shall never be liable for failing to meet said time or date. In the event of a failure to meet a deadline, the other party must always first give ABAC written notice of default and give ABAC a reasonable term to fulfil its obligations at a later date.

ARTICLE 3: Complaints with respect to the products supplied

Complaints relating to directly observable defects should be made known to ABAC by the other party, upon viewing or immediately after receipt of the items.

Therefore, the other party must check the delivered products immediately upon delivery and to complain immediately if these do not correspond to that which had been agreed.

Crop protection products are always delivered in sealed packaging. If the seal is broken or damaged, the other party should immediately submit a complaint upon delivery. ABAC undertakes to immediately take back those products and to provide the other party with new products.

If a defect is not discovered during an immediate check, as referred to above, nor could have been discovered, the other party should still submit the complaints in writing to ABAC, as soon as possible, but no later than 14 days after discovery.

If the other party fails to comply with this complaints obligation, any claim against ABAC shall lapse.

Slight deviations of the delivered items do not constitute grounds for complaints.

Samples, descriptions, images and publications are considered as an indication of the overall quality of the items to be delivered or the services to be provided. The other party is aware that these may differ from the information previously provided as a result of new insights or product composition.

Upon delivery of a defective product or service by ABAC, the other party should first give ABAC the opportunity to repair or replace the delivered product or service, failing which possible rights of the other party may expire. The other party shall only be entitled to a replacement if, in the opinion of ABAC, repair is not possible or raises objections.

Any deviations in the delivered products do not give the other party the right to refuse or suspend the receipt of or payment for the products delivered.

Once the other party has processed the products delivered, all claims against ABAC automatically lapse. The other party may never enforce a claim against ABAC after the delivered products or part thereof have been taken into use, supplied to a third party, or otherwise doubt or uncertainty may arise about the condition of the products delivered by ABAC.

Any judicial proceedings to be instituted against ABAC by any other party on account of liability of ABAC in respect of any defect in the delivered products shall expire twelve months after delivery. The reason for this is that after said period it will no longer be possible for ABAC to properly investigate or reconstruct the delivery/deliveries made, advice/opinions given or service/services provided, as a result of which they will be at a disadvantage in comparison with the other party from the point of view of evidence.

ARTICLE 4a: Specific provisions pertaining to courses:

These terms and conditions also apply in cases where courses are held or organised by or on behalf of ABAC. An exception to this applicability is if the content of a provision or article clearly does not or cannot relate to this part of the activities of ABAC.

These terms and conditions also apply in cases where the other party does not follow a course, but enters into an agreement on behalf of a third party, such as an employee. In those cases, the other party shall be obligated to point out the contents of these terms and conditions to the person that is going to follow the course and have them take note thereof. The legal relationship between ABAC and the student, not being the other party/client, shall be governed by these terms and conditions.

Except for by these terms and conditions, legal relationships with ABAC relating to courses are also determined by what is made known to other parties or students on behalf of ABAC in other ways.

The student is obligated to adhere to the dates, times and locations for classes determined by ABAC.

ABAC is authorised, for reasons of its own, to cancel a course or terminate a course after it has already started. In that case, the other party or student will be informed thereof as soon as possible and the amount invoiced shall be returned, or if the student enrolls in a different programme, the cost thereof will be deducted.

Even after registration, ABAC shall have the right to decide on the details of the structure of the course, as well as the location, date, time and duration, taking into account the wishes of the registered students where possible.

If ABAC is in doubt about the physical or mental abilities of a participant in a course, ABAC may require an appropriate medical certificate to be provided. After ABAC has taken note of the contents of said certificate, it shall be examined in consultation with the student whether participation/continuation of the course is possible. If no adequate medical certificate is provided or if the consultation fails, ABAC shall ultimately have the right to deny the student further access to the course. In that case, the course fee will be refunded proportionately.

ABAC reserves all intellectual property and other rights to all the course material, including digitally, provided by ABAC. The contents shall remain the inalienable property of ABAC or of those who have made the materials available to ABAC. Material that is made available by ABAC is intended exclusively for the other party and/or the student. They shall not be allowed to copy this material or communicate it otherwise to any third party. If an act in breach of these provisions is performed by the other party or student, ABAC shall have the right to claim full compensation.

Unless otherwise expressly agreed in writing, payment of tuition fees and the costs associated with the theory lessons to be attended individually or as a group must be paid in advance. The costs of the necessary textbooks and other teaching materials for practice and/or theory lessons must be paid before or upon delivery of those items, unless otherwise agreed in writing.

ARTICLE 4 b: Specific provisions pertaining to grant applications:

These conditions also apply in cases where support is provided by or on behalf of ABAC or advice is given in applying for subsidies by the other party or by ABAC on behalf of the other party or a third party. An exception to this applicability is if the content of a provision or article clearly does not or cannot relate to this part of the activities of ABAC.

ABAC may rely on the accuracy and completeness of the information provided to ABAC by the other party. The other party will obtain all the information by itself and ABAC is not obligated to independently make inquiries about information other than provided.

ABAC cannot guarantee whether or not a grant is actually obtained by the other party. Statements made in this regard by ABAC are merely estimates or expectations, and no rights can be derived therefrom by the other party.

Other party is responsible for timely submitting a request or additional documents. It is not the responsibility of ABAC to observe and/or secure deadlines.

Expenses reasonably incurred by ABAC for the benefit of the other party shall be reimbursed within 14 days, at the request of ABAC. For amounts exceeding € 500, ABAC shall be entitled to request an advance.

ARTICLE 5: Liability provisions

In including the clause to exclude and/or limit the liability of ABAC described below, the following has been considered.

In particular for deliveries of items, ABAC exclusively acts as supplier and never as assembler or manufacturer of the items concerned. Even though ABAC shall take all due care in selecting its subcontractors, it cannot exercise actual control over its suppliers - hereinafter also referred to as "pre-links" - and the manufacturing, processing and packaging processes they implement, nor the products they supply. Furthermore, ABAC has no influence on the content of the product information supplied by its pre-links. ABAC lacks the required special expertise, manpower, laboratory and other resources for sound control over its pre-links. The other party acknowledges this.

Exclusion or limitation of liability for product deliveries made, including the accompanying information material is essential for ABAC, since liability for possible extensive damage to the other party, caused by defective products or information material, seriously jeopardises the continuity of ABAC. Without exclusion or limitation of its liability ABAC would not be prepared to provide the other party with certain goods or services, given the unpredictable risks. Exclusion or limitation of liability allows ABAC to supply its products and services at market prices.

In agreeing to exclude and/or limit the liability of ABAC by means of these terms and conditions, it was further considered that the relatively small profit margins on the products and materials supplied would create an imbalance between the profit margin at ABAC and the damage to the other party. It is and may be expected from the other party that they will constantly exercise the utmost caution and care when using and handling the goods supplied by ABAC.

In case of liability of ABAC under an agreement or by virtue of the law, the other party must immediately notify ABAC thereof and give ABAC the opportunity to prevent or limit the damage, including by replacing the defective product or to otherwise undo the situation arisen with the other party, failing which the claims of the other party shall lapse.

The other party is obligated to, when requested, provide all relevant information to ABAC or its insurer and to cooperate in an investigation of the supplied products, and to provide access to wherever the products are located.

Insofar as a specific product - in particular in the case of misuse or improper storage - may create problems or a danger resulting in possible damage to the other party or a third party, ABAC shall not be held to warn the party thereof, since the parties consider the other party sufficiently competent. The risk of a particular product not being suitable for a particular application the other party wishes to use it for, rests with the other party.

Exclusion of liability

The other party shall exclusively bear the risk of choice of the products it has ordered with ABAC or services to be provided by ABAC that are combined with other goods or services, whether or not supplied by ABAC. ABAC shall not be liable for the choice of such a combination.

ABAC shall not be liable for any direct or indirect damage, loss of profits or consequential damages, damages to property, including animals, immovable property or persons, which have been caused by items supplied, advice provided, measurements made, explanations or instructions, or other information/training material. In addition, ABAC shall also never be liable for damage caused by incorrect assembly of products supplied. ABAC shall never be liable for damage caused by deliveries, services and/or advice not charged by ABAC.

Liability of ABAC for indirect loss, consequential loss, loss of profits or damages resulting from loss of sales and/or profits and loss due to delay is completely excluded.

Participation in courses given or organised by ABAC shall be at your own risk. ABAC does not accept any liability for any injury and/or damage suffered as a result of participation in said courses.

ABAC is not liable for damages resulting from a defect with respect to the facilities where courses or other meetings are held.

ABAC is not liable for damages resulting from a third party engaged by ABAC.

Limitation of Liability

The liability of ABAC towards any other party or a student is in any case limited to the amount equal to the (invoice) value of the products supplied or the services provided, or the course held, up to a maximum of € 5,000.

If it concerns - joint - claims of various other parties of ABAC for damages due to faulty processing or manufacturing of a product (or mixing of products), or due to an inadequately performed service or incorrect advice, this damage shall be limited to a maximum of € 5,000 in respect of each individual claim and a joint absolute maximum of € 25,000.

If none of the exclusions or limitations of liability for damages of ABAC as described above are applicable to a particular case, the obligation of ABAC to pay compensation will also be limited to € 5,000.

ARTICLE 6: Force Majeure

Force majeure shall mean any cause which cannot be attributed to ABAC and which prevents the performance of the agreement in full or in part, or severely impedes it or renders it inconvenient to such an extent that performance cannot reasonably be required from ABAC.

Force majeure shall also include, but is not limited to, war, flood, fire, strikes, lockouts, sabotage, government measures and the non-delivery or late delivery by subcontractors (pre-links), shortage or extraordinary price increases of resources, problems of or at pre-links of ABAC, power outages and/or computer malfunctions at ABAC or with third parties ABAC depends on, as a result of which the normal day-to-day affairs of the business of ABAC are prevented or hindered.

In case of force majeure or other unforeseen circumstances ABAC shall be released from its obligation to fulfil the contract. In case of temporary force majeure, ABAC shall have the right to change the time of delivery (or the start date of a course to be held), or to consider the agreement as dissolved.

If force majeure on the part of ABAC results in damage to the other party or a student, ABAC shall not be liable to pay any compensation.

In cases of force majeure, an agreed upon delivery/commencement date will be extended from the moment the force majeure has ended for such a period, that ABAC still has the same period in order to perform as would have been the case without force majeure.

ARTICLE 7: Payment

The amount the other party owes ABAC, including any VAT payable, shall become due and payable on the due date. The due date is the fourteenth day after the invoice date.

If ABAC is to deliver or perform elsewhere than in the Netherlands, the other party must pay a deposit equal to 90% of the agreed total amount once the parties have entered into an agreement. For shipment of the product to be delivered or a performance to be delivered by ABAC, the remaining 10 % of the agreed total amount must have been paid. As long as that is not the case, ABAC is not required to deliver or perform.

The other party, who has failed to pay or to pay in full after the due date, shall be in default without any warning or notice of default and shall be owing interest of 1 % per month from the due date.

As long ABAC has a claim against the other party, all that has been supplied by ABAC shall remain the property of ABAC. The other party is not allowed to pledge or transfer ownership to third parties of items that have been supplied under retention of title of ABAC. Sale of the items insofar it forms part of the normal course of business of the other party is the only exception.

In case of default, the other party authorises ABAC to take back the items and it undertakes to fully cooperate to this end, and hereby gives ABAC unconditional and irrevocable permission to enter any place where those items are located.

In case ABAC, for reasons of its own, requires security to be given, ABAC shall have the right to suspend the agreement until such security is given.

ARTICLE 8: Termination, dissolution and suspension

ABAC shall have the right, without further notice of default or judicial intervention being required, to unilaterally terminate contracts in full or in part, to declare the agreement terminated (by means of an extrajudicial declaration) or to suspend its performance, if the other party fails to comply with any obligation towards ABAC.

ABAC shall be entitled to dissolve the contract immediately, if:

- the other party is declared bankrupt,
- the other party has applied for a moratorium,
- the other party is allowed to participate in a debt management scheme
- seizure is levied against the other party, the other party is placed under guardianship or because the other party otherwise loses full or partial power of disposition of its assets:

ARTICLE 9: Applicable law and jurisdiction

All agreements with ABAC shall be exclusively governed by Dutch law. In all cases, the Dutch courts shall be competent and have jurisdiction to hear any possible dispute, including default of payment, between the parties.

Disputes arising from an offer or any contract entered into or any following agreements will be considered by the competent court of the place of business of ABAC. Furthermore, ABAC is also free to institute proceedings against the other party before the court of the place of business of the other party.