

## 1. Definitions

In the General Terms and Conditions of Supply, the capitalised terms have the following meanings.

- a) **2BA:** 2BA B.V., established at Energieweg 3 (3542DZ) in Utrecht and registered with the Chamber of Commerce under file number 17162509, as well as a current or future legal entity belonging to the same group as 2BA B.V.
- b) **General Terms and Conditions of Supply:** this document, including any attached annexes.
- c) **Data:** the whole of Product and Business Data, including any annexes (photo material, manuals, declaration of performance certificates, etc.) that are linked to that.
- d) **Data User:** every wholesale business, installer or other company that enters into an Agreement with 2BA on the basis of which it consults, purchases or applies Data from 2BA in its own CAD, ERP or similar software.
- e) **Database:** the electronic data collection of Product and Business Data, which can be consulted via the Platform.
- f) **Data Supplier:** every wholesale business, installer or other company that wishes to make use of the Platform by having Data about products it manufactures and/or trades in included in the Database and, to that end, enters into an Agreement with 2BA.
- g) **Third Parties:** other companies that have a relationship with 2BA or the Counterparty that are not mentioned by name.
- h) **Services:** the work to be performed by 2BA for the benefit of the Counterparty on the basis of the Agreement.
- i) **Service Provision:** the whole of the services and products that are provided and supplied on the basis of the contract.
- j) **Error(s):** incorrect Data or supply of Data that blocks progress for fields, records, files or the supply as a whole.
- k) **Users:** all persons who are employed with the Counterparty and use the Platform to access and/or use Data from the 2BA Database.
- l) **Times of Use:** Open on Working Days from Monday to Friday, between 07:00 and 19:00.
- m) **GS1:** the party providing the GLN ('Global Location Number') and GTIN ('Global Trade Item Number').
- n) **Business Data:** the logistic information and price information associated with the product to be supplied. Also referred to as product details.
- o) **Intellectual Property Rights:** all intellectual property rights and associated rights, which in any case includes copyrights, database rights, trade name rights, rights to domain names, rights to know-how, trademark rights, design rights, neighbouring rights and patent rights.
- p) **KBI:** *Ketenstandaard Bouw en Installatie*, being the party determining the communication and classification standard (SALES and ETIM, respectively) on the Dutch market.
- q) **Agreement:** the written arrangements between 2BA and the Counterparty with regard to the carrying out and provision of Services, of which the General Terms and Conditions of Supply and the PSC form an inextricable part.
- r) **Parties:** the Counterparty and 2BA

- s) **Platform:** 2BA's on-line platform with 2BA's Services for the controlled and computerised exchange of electronic Product and Business Data.
- t) **Product Data:** the description of the product, which in any case includes the GTIN ('Global Trade Information Number'), product number, brand name, serial (number), type indication and (if classified in accordance with the ETIM standard) the class, characteristics and brand values of the product.
- u) **PSC:** 2BA's Product and Services Catalogue that is part of the Agreement and to which the General Terms and Conditions of Supply apply in full.
- v) **Software Partners:** Software suppliers with a logo partner contract or a contract for use. These are software suppliers of PIM software (through which the Data Supplier manages Product and Business Data and supplies it to the Database) or ERP, Calculation and CAD Software (through which the Data User uses the Product and Business Data from the Database).
- w) **Tariff basis:** For most rates a model of "the strongest shoulders" has been chosen. Determining factors are company size in number of employees and the membership of a shareholder of 2BA. For the number of employees, the entire organization is considered as the sum of the formation in full time equivalents and the average size of the flexible non-core workforce
- x) **Counterparty:** the Data User, Data Supplier or Software Partners.

## 2. Applicability and interpretation

- 2.1 These General Terms and Conditions of Supply apply to all offers and tenders, and any Agreements that arise from that, to which 2BA is a party.
- 2.2 In the event that any provision of these General Terms and Conditions of Supply and/or the Agreement is void or voided, the other provisions will remain in full force. 2BA and the Counterparty will consult in order to agree on new provisions to replace the void or voided provisions, taking as much account as possible of the object or purport of the void or voided provisions.
- 2.3 If parts of the Agreement and its annex(es) conflict with the General Terms and Conditions of Supply, the hierarchy is as follows, unless otherwise agreed:
  - (a) the Agreement;
  - (b) any other documents that have been attached to the Agreement;
  - (c) the PSC;
  - (d) the General Terms and Conditions of Supply.

## 3. Formation and amendment of the Agreement

- 3.1 All quotations and other offers submitted by 2BA are without any obligation and are valid for 30 days after 2BA sends them.

- 3.2 The Agreement will be formed by the Counterparty signing the Agreement in writing and returning it to 2BA (electronically).
- 3.3 If the Counterparty's acceptance deviates from the offer (even on a minor point), 2BA will not be bound by it. In such case, the Agreement will not be formed in accordance with this deviating acceptance, unless 2BA indicates otherwise.
- 3.4 The Agreement can only be amended by means of a written document, signed by the Parties.
- 3.5 The procedure as described in Article 3.4 does not apply to changes of minor importance or changes made in connection with new legislation. 2BA may implement these changes unilaterally. In the case of changes of minor importance or changes made in connection with new legislation, the Counterparty does not have the option of terminating the Agreement.

#### 4. Obligations of 2BA

- 4.1 When introducing these, 2BA will comply with new versions of the sector standards (Sales, ETIM, GS1 and BMEcat). 2BA will indicate when it is going to phase out certain versions. When doing so, it will give the Counterparty a term it considers reasonable to switch to the new sector standards.
- 4.2 The Counterparty can supply and export Data in the file formats as stated on [www.2ba.nl](http://www.2ba.nl). 2BA has its own internal format which in any case contains all relevant fields of the in 4.1 mentioned versions. In processing the files provided, the data will be imported into 2BA according to the broadest standard. Files will be created on the basis of the data in 2BA and the rules of the requested export format.
- 4.3 2BA monitors quality arrangements regarding file format, ETIM and the topicality arrangements with the Data Supplier. Where required, 2BA will confront the Data Supplier about this.
- 4.4 2BA will make every effort to ensure the Platform can be broadly used and as many Data Suppliers and Data Users as possible are in line with each other.
- 4.5 2BA is authorised to indicate – at the request of a Data Supplier – which Data Users (company name) have downloaded its data.
- 4.6 Data Suppliers are to keep a record of all the Data supplied for the benefit of the Platform, which will continue to be their property. This enables 2BA to exert direct substantive influence on the correctness, completeness and topicality of the Data.
- 4.7 By means of the latest versions of anti-malware, 2BA will ensure that all the sites, web services, documents and downloads are free from viruses, malware or other forms of harmful software. Unknown threats or varieties of existing threats are considered force majeure.

#### 5. Rules of Use for the Platform

- 5.1 Using the Platform for activities that are contrary to the Agreement or applicable laws and regulations is prohibited. The Counterparty is personally responsible for complying with laws and regulations.
- 5.2 It is expressly forbidden to store or disseminate

materials or information, or cause materials or information to be disseminated, via the Platform that (1) infringes Intellectual Property Rights, (2) contains viruses, malware or other forms of harmful software, (3) is libellous, slanderous or offensive.

- 5.3 It is prohibited to use the Platform in such a way that it inconveniences or hinders others. This includes – among other things – uploading or downloading excessive quantities of data or making excessive calls (whether or not by using scripts or programmes).
- 5.4 If 2BA concludes that the Counterparty is violating the abovementioned rules of use, or receives a complaint about that, 2BA will warn the Counterparty about this violation. If the Counterparty fails to take measures, fails to take these measures in time or takes insufficient measures, 2BA may act to terminate the violation itself. These measures may include – for example – removing certain Data or making it inaccessible, or blocking access to the Platform, in full or in part. In urgent or serious cases, 2BA may intervene without advance warning.

#### 6. Links (APIs)

- 6.1 2BA offers APIs through which the Counterparty can link to the Platform.
- 6.2 Links can affect the technical and functional operation of the Platform. 2BA will make every effort to inform the Counterparty thereof.
- 6.3 2BA cannot accept liability for links to third-party software and services. The result obligations and best efforts obligations vested in 2BA do not apply to the links created, nor to third-party services.

#### 7. Accounts

- 7.1 2BA will make an administrator account available to the Counterparty, by means of which an employee of the Counterparty can log into the Platform to manage and use the Services. Through this administrator account, additional user accounts can be created for other employees of the Counterparty.
- 7.2 When using an account to log in for the first time, the Counterparty will change the associated password, and will choose a strong password. The password must be changed on a regular basis.
- 7.3 The Counterparty is responsible for keeping the login details for the account a secret.
- 7.4 All acts performed after an account of the Counterparty is used to log in will be deemed to have been performed under the responsibility and supervision of the Counterparty. In the event of a suspicion of abuse, the Counterparty must inform 2BA as soon as possible, by telephone, so that 2BA can take the required measures.

**8. Data usage**

- 8.1 The Data Supplier will be the owner of the Data at all times. The conditions concerning data usage the Data Supplier sets in its (general) terms and conditions will continue to apply for all (types of) Data Users with regard to using the Data at all times.
- 8.2 The Data User will only receive a non-exclusive, non-transferable and non-sublicensable right of use as described in this article. The right of use applies for the duration of the Agreement. Data may only be used for purposes not referred to in this article with the prior written permission of 2BA and the relevant Data Supplier.
- 8.3 The Data User may use the Data that is available through the Platform to (automatically) fill its own systems and internal processes (for example to support the logistic process or the purchase and sales process, or for the benefit of the installation of the products to which the Data pertains (such as making calculations and/or estimates))
- 8.4 In the case of external oriented systems (such as making websites and/or catalogues), a Data consumer may only use the Data in this context if there is a contractual relationship between the Data provider and Data consumer for such an application of the Data use.
- 8.5 The Data User is expressly forbidden from using the Data acquired through the Platform to adopt a market position, or implement a price change that is contrary to the applicable competition law. In addition, Users are forbidden from using the Data acquired through the Platform in a manner that prejudices the Data Suppliers or the Data Users in any way.
- 8.6 If the Agreement between 2BA and a Data Supplier has been or is going to be terminated, 2BA will remove the Business Data of the relevant Data Supplier from the Database. However, insofar as these are present, 2BA will not remove Product Data from the Database. 2BA reserves the right to retain the keys of Business Data, because Data Users must be able to consult these keys within the framework of administration, multi-year maintenance and demolition.

**9. Data Supplier**

- 9.1 The Data Supplier undertakes to include any Data that the Data Supplier also disseminates elsewhere and that is suitable for the installation sector and adjoining sectors that 2BA serves in the Database of the Platform, in order to make the Database as complete as possible.
- 9.2 The Data supplied must be correct and up-to-date. 2BA will analyse the Data supplied, and will provide an import report with the faults and warnings found per upload. It is up to the Data Supplier to act on such a report or put the file through anyway, including the records containing the warnings.
- 9.3 The Data may only be included in the Database of the Platform by the Data Supplier or a representative appointed by the Data Supplier.
- 9.4 The Data Supplier will promote the use of the Platform as the sector channel among its users.

- 9.5 The Data Supplier may only import Data through the Platform of products (1) that it manufactures itself, (2) of which it is the importer or agent for the Dutch market, or (3) that are part of its (wholesale) assortment and are sold by the Data Supplier. When doing so, a wholesale business may only supply Business Data.
- 9.6 The Data Supplier guarantees that its Data will be supplied in accordance with the ETIM NL standard or another standard accepted by 2BA, as indicated on [www.2ba.nl](http://www.2ba.nl).
- 9.7 In the event that the Data supplied is found to contain Error(s), 2BA reserves the right to refuse or remove the Data. When Errors are found, 2BA will inform the Data Supplier thereof.
- 9.8 The Data Supplier will continue to be responsible for its Data as contained in the Database.
- 9.9 Where Data contains references or links to other websites or sources, the Data Supplier is responsible for the correctness of these references or links.
- 9.10 2BA will under no circumstances be liable for loss caused by incorrect, out-of-date or incomplete information in the Database. The Data Supplier indemnifies 2BA against any claims relating to the Data the Data Supplier has included in the Database, or for claims relating to websites or sources to which the Data Supplier provides a reference or link in the Database.

**10. Data User**

- 10.1 The Data User will only apply the Data it consults via the Database for its own use within its own organisation and its own systems.
- 10.2 The Data User undertakes to handle the Data acquired via the Database with care.
- 10.3 The Data User will only use the Data for the purpose for which the Data Supplier supplied it, and within the boundaries set by the Data Supplier.
- 10.4 The Data User will promote the use of the Platform as the sector channel among its suppliers.

**11. Software Partner**

- 11.1 Pursuant to the Agreement, the Software Partner (PIM/ERP/Calculation/Cad) has a non-exclusive, non-transferable and non-sublicensable right of use to – solely for the benefit of its product development, demonstrations and/or course material – offer Data for testing purposes, consult the Database and download and store the Data.
- 11.2 The Software Partner will promote the use of the Platform as the sector channel among its customers and/or relations.
- 11.3 2BA reserves the right to certify the link between the 2BA environment and the software of the Software Partner.
- 11.4 The Software Partner (Logo Partner) may use 2BA's logo on its own products and in its own advertising campaigns, but is required to comply with the instructions of and any guidelines set by 2BA.
- 11.5 The Software Partner (Logo Partner) is entitled to being listed on [www.2ba.nl](http://www.2ba.nl), with its logo, name and

(contact) details, and a description of its functionalities. In addition, the PIM Software Partner (Logo Partner) is entitled to being listed in the 2BA presentation folder for Data Suppliers

## 12. Remuneration

- 12.1 If, pursuant to the Agreement, the Counterparty owes 2BA a periodic fee, 2BA will invoice this annual fee once on the commencement date of the contract and at the start of every calendar year.
- 12.2 If the Agreement commences during an ongoing calendar year, the Counterparty will (immediately) owe the fee in proportion to the remaining number of months of that calendar year.
- 12.3 Once every calendar year, 2BA may increase the fee by a percentage equal to the increase of the Services Price Index (*Dienstenprijs Index – DPI*) as established by Statistics Netherlands in the preceding year. This indexation requires no further announcement and does not give the Counterparty the right to terminate the Agreement.
- 12.4 Price increases other than as referred to in paragraph 13.3 will be announced once every calendar year, though no later than on 30 September preceding the year of their implementation. The Counterparty will have the right to terminate the Agreement within 30 days of the change being announced, in writing, which termination will be effective from the date the change is implemented.
- 12.5 If the Counterparty wishes to have additional work performed that does not fall under the Agreement but does fall under 2BA's purpose, 2BA will draw up a tender for that work. Following written permission from the Counterparty, this work will be carried out and charged on the basis of subsequent calculation, at competitive rates.

## 13. Invoicing and payment

- 13.1 2BA reserves the right to send electronic invoices.
- 13.2 The Counterparty is obliged to report any changes in its name, contact details, address, account number or other details that are relevant to invoicing to 2BA without delay.
- 13.3 The Counterparty is obliged to, no later than on 10 December of every year, provide 2BA with information on any changes in the **Tariff basis** on 1 January of the following year, as well as – insofar as the Counterparty requires this internally for the payment – the PO, reference or order number that must be stated on the next invoice.
- 13.4 2BA will draw up the annual invoice on the basis of the most recent details. This applies regardless of whether paragraph 13.2 and 13.3 are complied with.
- 13.5 The Counterparty will pay the invoice, including VAT, within 14 (fourteen) days of receipt of the invoice.
- 13.6 If the Counterparty requires an adjusted invoice in connection with a failure to comply with 13.2 or 13.3:
- an additional invoice or credit note will be drawn up for adjustments with financial consequences.
  - an adjusted invoice will be drawn up and sent – with the original invoice number, invoice date and due date

– for adjustments in the name and address details, PO numbers, etc.

- 13.7 Adjustments in invoices in accordance with Article 13.6 do not suspend the payment date of the original invoice.
- 13.8 When paying 2BA's invoice, the Counterparty cannot rely on any settlement of any nature.
- 13.9 From the date following the due date of the relevant invoice, the Counterparty will owe a statutory interest equal to the statutory interest that applies in the Netherlands at the time on any late payment, without further notice of default being required. In addition, in such case, the Counterparty will be obliged to pay any and all legal and extra-judicial collection costs, including the costs of lawyers, bailiffs and debt-collection agencies. In addition, if and as long as the Counterparty fails to comply with its payment obligations under this Agreement, or fails to comply with these in full, 2BA will be entitled to discontinue or refuse to provide the Services to be provided by 2BA on the basis of which the right to the relevant payment arose, without that resulting in any liability.
- 13.10 All prices quoted by 2BA are in euros and are exclusive of VAT and other government levies.

## 14. Intellectual property

- 14.1 The Intellectual Property Rights, as well as similar rights to protection of the Platform and the contents of the Platform are exclusively vested in 2BA and/or its Data Suppliers. Nothing in this Agreement constitutes full or partial transfer of these rights.
- 14.2 The Counterparty indemnifies 2BA against any third-party claims and claims for compensation in connection with an infringement of Intellectual Property Rights or other third-party rights related to the Counterparty's dissemination and/or use of Data (whether or not via the Platform).

## 15. Liability

- 15.1 On an annual basis, 2BA's liability for loss as a result of a failure to comply with its obligations, an unlawful act or otherwise is limited to 8.33% of the amount (excluding VAT) paid to 2BA pursuant to the Agreement in the relevant year.
- 15.2 Any limitation or exclusion of liability contained in the Agreement or the General Terms and Conditions of Supply does not apply in the event that the loss is due to intent or wilful recklessness on the part of 2BA.
- 15.3 A condition for any right to compensation arising is that the Counterparty reports the loss to 2BA as soon as possible after becoming aware thereof, though no later than within 10 working days, in writing, on submission of the necessary evidence.
- 15.4 The Data Supplier itself is liable for its Data that is distributed via 2BA.

15.5 2BA is expressly not liable for consequential loss, loss of data, loss of profit, lost savings and loss due to business interruption. 2BA is not liable for Errors in the Data of the Data Supplier.

15.6 The Data Supplier indemnifies 2BA against all claims from Data Users and will compensate 2BA in full for any such claims. 2BA is not liable for any loss caused by the Data Supplier supplying incorrect or incomplete information.

## 16. Force majeure

16.1 2BA cannot be obliged to perform any obligation under the Agreement if performance is prevented due to force majeure. 2BA is not liable for any loss due to force majeure.

16.2 A force majeure situation will in any case be considered to exist in case of power outages, Internet failures, telecommunication infrastructure failures, network attacks (including D(DOS) attacks), attacks by malware or other harmful software, civil commotion, mobilisation, war, import and export barriers, strikes, stagnation in supplies, fire, floods and any circumstance in which its suppliers do not enable 2BA to comply with its obligations, regardless of the reason for that.

16.3 If a force majeure situation has lasted for more than 90 days, both Parties will be entitled to terminate the Agreement, in writing, with immediate effect. In such case, the Services 2BA provided prior to the force majeure situation arising and during the force majeure situation will be settled on a proportional basis.

## 17. 2BA Complaints Procedure

17.1 In the event of a complaint about the Platform or the Services, the Counterparty can submit a substantiated complaint to the 2BA Board by email.

17.2 2BA will determine whether (in its opinion), the complaint is well-founded.

17.3 2BA will handle the complaint within a reasonable term.

17.4 The Counterparty can monitor the handling of the complaint via the 2BA ticket system.

17.5 Neither the submission of a complaint, nor the determination that a submitted complaint is justified will influence the obligation to pay the fees as referred to in Article 12, and/or the amount thereof.

## 18. Complaints Procedure Data of the Data Supplier

18.1 In the event of a complaint about the Data of a Data Supplier, the latter will be informed by email, and be given the opportunity to correct its Data.

18.2 In the event that the Data Supplier does not adapt or remove the Data within 5 working days, 2BA reserves the right to remove the Data.

18.3 2BA reserves the right to provide Product or Business Data with outstanding questions with an on-line marking and, in urgent cases, block or remove such Data immediately.

18.4 The Supplier and the User can monitor the entire handling of the complaint via the 2BA ticket system.

## 19. Duration and termination of the Agreement

19.1 The Agreement commences on the date of signature and will have a term of 3 years, first ending on 31 December of the year in which this 3-year term ends.

19.2 The Agreement will be tacitly renewed by subsequent terms of one calendar year, unless one of the Parties terminates it in writing.

19.3 The Parties can only terminate the Agreement in writing by 31 December of the ongoing calendar year, provided that the Counterparty receives this termination before 1 October of that year.

19.4 2BA may suspend or terminate the Agreement with immediate effect, without any notice of default being required, if (1) the Counterparty fails to comply with an essential obligation under the Agreement, or (2) the Counterparty is put into liquidation or declared bankrupt, applies for or is granted a moratorium, the Counterparty's activities are discontinued or the Counterparty's company is liquidated.

19.5 In the event that the Agreement is terminated, the Counterparty will continue to owe any amounts already invoiced, without any obligation to reverse arising. The Counterparty may only cancel the part of the Agreement that has 2BA has not yet performed. If the termination can be attributed to the Counterparty, 2BA will be entitled to compensation of all the direct and indirect loss suffered as a result of the termination.

19.6 Termination or cancellation of the Agreement does not release the Parties from their obligations under this Agreement insofar as these obligations are explicitly or by their nature intended to continue to apply, such as payment obligations and obligations relating to Intellectual Property Rights, limitation of liability and applicable law and competent court.

## 20. Confidentiality

20.1 The Parties undertake towards each other to keep confidential all that which, in terms of information and details, is provided to them in the performance of the Agreement. They undertake towards each other to only use this information within the framework of the performance of the Agreement. This means – among other things – that the Parties will not provide this information to Third Parties, will only copy it insofar as this is required for the performance of the Agreement, and will not unjustly use this information for commercial purposes.

20.2 Following termination of the Agreement, the duty of confidentiality with regard to information already provided will continue to apply for a period of 5 (five) years.

20.3 At the providing party's first request, as well as immediately after termination of this Agreement, the receiving party will destroy any information in its possession and report that this has been done. However, physical originals (such as prototypes, papers and samples) must be returned.

20.4 The Parties will ensure that the obligations as referred to in the preceding paragraphs are strictly complied with by all those who are (or have been) in their employment.

## **21. Choice of law and forum**

21.1 The Agreement is subject to Dutch law.

21.2 To the extent that the rules of mandatory law do not prescribe otherwise, any disputes between 2BA and the Counterparty in connection with the Agreement will be submitted to the competent court in the Netherlands for the district in which 2BA has its registered office.

## **22. Miscellaneous conditions**

22.1 2BA may transfer its rights and obligations arising from the Agreement to a Third Party that takes over 2BA or business activities of 2BA.

22.2 2BA reserves the right to change or supplement these General Terms and Conditions of Supply. The amended conditions will also apply to existing Agreements. 2BA will notify the Counterparty at least thirty calendar days before the amendment or addition takes effect via (1) a message on [www.2ba.nl](http://www.2ba.nl), or (2) the email address of the Counterparty that is known to 2BA.

22.3 If the Counterparty does not wish to accept the amendments or additions, the Counterparty can submit a reasoned objection within 14 days of their announcement, based on which 2BA will reconsider the amendment or addition. If 2BA decides to proceed with the amendment or addition, the Counterparty can terminate the Agreement in writing as of the date on which the amendment would take effect.

22.4 The procedure as described in Article 22.3 does not apply to changes of minor importance. 2BA may implement such changes without advance notice. In the case of changes of minor importance, the Counterparty does not have the option of terminating the Agreement.