

# GENERAL TERMS AND CONDITIONS OF SUPPLY

Horena Trading Holland B.V.

## 1. DEFINITIONS

In these General Conditions:

- a. "H.T.H." means Horena Trading Holland B.V., the user of general conditions.
- b. "Other Party" means the natural person or legal entity, or his/its legal successor, on whose behalf or on whose account H.T.H. has entered into a contract to supply.

## 2. GENERAL PROVISIONS

1. These General Conditions are applicable to all offers of H.T.H. and contracts between H.T.H. and the Other Party under which H.T.H. supplies goods even if these goods are not specified in the contract. Departures from these General Conditions shall apply only if they are expressly agreed by the parties in writing.
2. All offers are without obligation, unless the offer expressly indicates otherwise.
3. Applicability of any purchase or other conditions of the Other Party is expressly rejected.
4. If and as soon as it is established that one or more of the provisions of these General Conditions is/are void or has/have been set aside, the remaining provisions of these terms and conditions shall remain in full force and effect and H.T.H. and the Other Party shall consult one another in order to agree new provisions to replace the ones that are void or have been set aside; as far as possible the object and effect of the provisions that are void or have been set aside shall be taken into consideration.
5. The failure by H.T.H. at any time to require performance of one or more of the provisions of a contract shall in no way whatsoever affect the rights of H.T.H. to demand performance by the Other Party at a later time.
6. The Other Party shall not, otherwise than for factoring purposes, assign or in any other way transfer rights and/or obligations under the contracts concluded between itself and H.T.H., unless with the prior written consent of H.T.H.

## 3. COMMENCEMENT DATE; MODIFICATION

1. Any contract between H.T.H. and the Other Party will enter into force at the time at which a copy of the offer signed by the Other Party is received by H.T.H..
2. An order by the Other Party, which is done by means of fax and/or e-mail can be confirmed by H.T.H. by means of fax and/or e-mail.

3. Modifications to a contract as referred to in subclause 1, with the exception of the General Terms and Conditions of Supply, are only valid if they have been accepted in writing by both parties.

## 4. MODIFICATION OF THE TERMS AND CONDITIONS OF SUPPLY

1. H.T.H. reserves the right to modify or add to these terms and conditions.
2. Modifications to these terms and conditions shall also apply in respect of contracts already concluded between H.T.H. and the Other Party. The Other Party will receive a copy of the new terms and conditions from H.T.H. as soon as modifications are final. The Other Party will confirm in writing the receipt of these new terms and conditions.
3. If the Other Party does not wish to accept a modification of these terms and conditions, he may terminate the contract up to 14 days after receiving a copy of the new terms and conditions on grounds connected with that modification, with the exception of the modification of clauses 3 and 4.

## 5. TERMINATION

1. One party shall be entitled to terminate the contract if the other party, after a proper and detailed written notification of default, in which a reasonable period is set to remedy the defect, imputably fails to perform one or more essential obligations pursuant to the contract.
2. If the Other Party fails to fulfil any obligation arising out of the contract, or fails to fulfil it properly or in good time, or in the event of the protective bankruptcy, bankruptcy petition, administration order or liquidation of goods of the Other Party, H.T.H. shall be entitled to terminate the contract immediately, in whole or in part, without notice of default or court order being required.
3. If at the time the contract is terminated the Other Party has already or should already have received benefits by way of implementation of the contract, the termination shall not affect these benefits and the corresponding payment obligations, unless H.T.H. is in default in respect of these benefits. Any amounts H.T.H. has invoiced or would have been able to invoice in connection with whatever has already been supplied or carried out before termination will remain due in full subject to the provisions of the previous

sentence and will become immediately payable at the moment of termination.

## **6. DELIVERY DATES AND RESERVATION OF TITLE AND RIGHTS**

1. All delivery dates quoted by H.T.H. are determined to the best of its ability on the basis of the information available at the time the contract was concluded and will as far as possible be observed. However, H.T.H. will not be in default by the mere fact of its exceeding a delivery date it has quoted. H.T.H. is not bound by any delivery date which can no longer be met on account of circumstances beyond its control. If any time limit threatens to be exceeded, H.T.H. and the Other Party shall consult one another as soon as possible.
2. All goods delivered or to be delivered to the Other Party remain the property of H.T.H. until all amounts the Other Party is liable to pay for the goods supplied or to be supplied pursuant to the contract, plus legal interest and costs of recovery, have been paid in full.
3. Rights are at all times granted or, where appropriate, transferred to the Other Party under the condition that the Other Party pays the agreed compensation in full and in good time.
4. H.T.H. shall deliver the goods ex works.
5. Satisfying legal and/or other obligations applicable to the goods supplied for by H.T.H. in the country of the Other Party or in the countries through which the Other Party transports the goods are the sole responsibility of the Other Party.
6. The risk of loss or damage to goods which are the subject of the contract pass to the Other Party the moment they are put at the disposal for the Other Party for transport.

## **7. PRICES AND PAYMENT**

1. In so far as the contract in which concerns amounts to be paid periodically by the Other Party, H.T.H. shall be entitled to modify the agreed prices and rates by means of written notification to the Other Party, subject to a period of three months' notice.
2. H.T.H. is at all times entitled to modify the agreed prices and rates by means of written notification to the Other Party for benefits which according to the relevant timetable or the contract will be delivered at least three months after the date of notification.
3. All invoices shall be paid by the Other Party according to the payment conditions agreed and stated on the invoice. If there

are no such conditions the Other Party shall pay within thirty days after the invoice date.

4. If the Other Party fails to pay the amounts due within the agreed time limit or the time limit determined under subclause 3 above, the Other Party shall be liable to pay legal interest on the amount outstanding, without notice of default being required.
5. If the Other Party fails to pay the debt after being given notice of default, the debt may be passed on to a third party for collection, in which case the Other Party shall, in addition to the total amount due (inclusive of legal interest), also be obliged to pay in full any costs incurred, whether with or without resort to the courts, in connection with recovery of the amount, and which will be fixed at no less than 15% of the total sum due.
6. All prices stated in any contract are exclusive of VAT and other charges imposed by or on behalf of the government, unless expressly stated otherwise. Nevertheless, all payments must be made inclusive of VAT and/or other charges.
7. Prices apply only to the goods, services and work specifically mentioned in the contract. Any additional goods or services supplied or work carried out shall be invoiced separately at the prices applying on the date they are supplied.
8. Transport charges are at the expense of the Other Party. Costs related to satisfying legal and/or other obligations applicable to the goods supplied for by H.T.H. in the country of the Other Party or in the countries through which the Other Party transports the goods are at the expense of the Other Party.
9. An Other Party that has never before entered into a contract with H.T.H. must pay the entire sum for an order in advance.
10. Payment must be made by transfer into a bank or giro account stated on the invoice or stated separately by H.T.H. in writing, payable to H.T.H.

## **8. COMPLAINTS**

1. H.T.H. gives a full warranty on all goods supplied for during a period of 12 calendar months. The warranty does not apply in the event goods are improperly used or maintained, or not used and maintained as the enclosed user's manual prescribes, by the Other Party or by third parties to which the Other Party has supplied the goods.

2. In the event of visible defects the Other Party must complain within 8 days after delivery, failing which there shall be no further claim against H.T.H.
3. Complaints in respect of hidden defects must be made in writing by means of a registered letter within 8 days after the defect has been discovered by the Other Party, or could or should reasonably have been discovered, if that would have been earlier. If this is not done, there shall be no further claim against H.T.H.
4. If the complaint is justified, products supplied will be adapted or replaced, or compensation paid, after consultation. (tevens vergoeding transportkosten)
5. A complaint shall not suspend the obligations of the Other Party.
6. the market by the Other Party, which came into being wholly or partly on the basis of the goods, services and/or work supplied to the Other Party or otherwise placed on the market by H.T.H.
7. Liability on the part of H.T.H. on account of an imputable failure in the performance of a contract shall arise only if the Other Party has immediately and duly notified H.T.H. of its default in writing, thereby setting a reasonable time limit within which to remedy the default, and H.T.H. remains imputably in default even after that time limit. The notice of default must contain such a detailed description of the default that H.T.H. is able to respond adequately.
8. H.T.H. shall not be liable if a default is caused by force majeure.
9. The restrictions stated in this clause shall not apply if the loss or damage is the consequence of the deliberate act or gross negligence of H.T.H. or its managerial staff.

## 9. LIABILITY

1. Liability of H.T.H. is always excluded for indirect loss or damage, including consequential damage, loss of profits, loss of savings and loss or damage resulting from interruption of business.
2. Apart from the cases mentioned in this clause, H.T.H. accepts no liability whatsoever for loss or damage, irrespective of the ground on which any action for damages might be based.
3. If and to the extent this is covered by its insurance, H.T.H. shall only accept liability for direct loss or damage suffered by the Other Party which results from an imputable failure in the performance of its obligations under the contract or a wrongful act, up to the amount of the payment to be made by this insurance.
4. If the insurer should for any reason fail to pay out, or if the liability for the loss or damage is not or not sufficiently covered by any insurance, H.T.H. shall only accept liability for the direct loss or damage suffered by the Other Party which results from an imputable failure in the performance of its obligations under the contract or a wrongful act, up to the amount of the price H.T.H. is to charge the Other Party or the amount of the payment to be made by the insurance, if higher.
5. The Other Party shall indemnify and hold H.T.H. harmless against any claims from third parties in respect of the use by those third parties of goods, services and/or work supplied to them or otherwise placed on

## 10. FORCE MAJEURE

1. "Force majeure" in these General Conditions means the circumstances which prevent performance of a contract by H.T.H. and are not imputable to H.T.H.. These include but are not limited to strikes and illness of staff.
2. During force majeure delivery and other obligations of H.T.H. arising out of the contract are suspended. If the period in which H.T.H. is unable to perform an obligation as a result of force majeure lasts longer than two months, both parties shall then be authorized to dissolve the contract without judicial intervention and without this giving rise to any right to damages.
3. If H.T.H. has already partly fulfilled its obligations before the commencement of force majeure, or if it will only partly be able to fulfil its obligations as a result of the commencement of force majeure, it shall be entitled to invoice whatever has already been supplied or the part that can still be supplied separately and the Other Party shall be obliged to pay this invoice as if it concerned a separate contract.
4. H.T.H. shall also be entitled to rely on force majeure if the non-imputable circumstance which prevented performance of its obligation only commenced after it should have fulfilled its obligation.

## **11. DISPUTES AND APPLICABLE LAW**

1. All disputes which cannot be settled amicably by the parties shall be settled by the competent court of the arrondissement Zutphen.
2. Contracts between H.T.H. and the Other Party are governed by Dutch law