

GENERAL PURCHASE CONDITIONS HERTEL B.V.

Article 1. Applicability

1. These purchase conditions are applicable to all requests, offers and agreements in which Hertel acts as buyer of objects and services.
2. Deviation of these conditions can only take place if this has been agreed in writing.
3. Hertel expressly does not accept delivery conditions or other conditions of the vendor.

Article 2. Formation of the agreement

1. Agreements for delivery of objects and/or services will come about by either an oral or written offer (including digital form) and acceptance there-of.
2. Every offer made by vendor occurs irrevocable and unconditional.
3. If acceptance of the offer differs from the offer made by vendor, vendor still is bound, unless vendor immediately objects to the differences.
4. Unless in writing, Hertel is not obligated to pay costs to vendor in connection with the offer requested by her.

Article 3. Prices

The prices are fixed and are, unless agreed differently in writing, in Euros, excluding turnover tax, and are based on the delivery terms DDP and the agreed place of delivery.

Article 4. Delivery

1. The most recent Incoterms, issued by the International Chamber of Commerce, are applicable for the interpretation of delivery terms.
2. In this article delivery also includes split delivery.
3. The delivery has to take place at the agreed location and unloaded in store room at the agreed time. Delivery dates count as fatal dates.
4. Vendor immediately informs Hertel in writing when he suspects that he will not be able to fulfil the agreement. Therewith the vendor gives the (possible) causes of the non-fulfilment. Henceforth vendor and Hertel will consider in which way the arisen situation will be met, provided that the final decision-making authority in the case lays with Hertel, and without prejudice to the right that Hertel can derive from the law and the agreement and without prejudice to the right of Hertel to impose a fine to vendor to a maximum of 5% of the purchase price of the complete order.
5. If Hertel - outside rejection - for whatever reason is not able to receive the goods to be delivered at the agreed time, Hertel does not become in default. Henceforth the goods will remain for the risk of vendor and vendor shall store and secure the goods as known property (this notwithstanding article 6 paragraph 1) of Hertel to the satisfaction of Hertel.
6. During the storage vendor shall take all reasonable measures to prevent decline in quality of the goods.
7. Vendor will include sales documents, all available documentation that is intended for using the goods as they should be as well as possible certificates of inspection, testing, examination, control and guarantee with the goods to be delivered.
8. Vendor shall take the safety rules valid for Hertel and other house rules that are applicable to him into account. Hertel will give him these rules for consultation on request.
9. Examination, inspection, control and/or testing of goods in accordance with the determined in article 8, the delivery neither means delivery nor reception nor transition of risk.

Article 5. Packaging & Sending

1. The goods to be delivered should be packed properly and marked in accordance with the indications of Hertel.
2. All packaging, with exception of - marked as such by vendor - loan packaging, will become property of Hertel upon delivery. Hertel can renounce this right of acquisition of ownership and obligate vendor to take the packaging back.
3. Returning of loan packaging and packaging of which Hertel does not desire the ownership is for the account and risk of the vendor and occurs at a destination indicated by vendor. If vendor does not indicate a destination, Hertel has the right to send the goods to the address of vendor.

4. Vendor is responsible for damage which occurred through or in relation to the fact that the packaging does not meet the specified in the first paragraph.

Article 6. Ownership & Risk

1. The ownership of and the risk for the goods and/or services to be delivered transfer at the moment of delivery, as soon as the goods have been received by Hertel at the agreed place of delivery or when the services have been carried out, this without prejudice to the specified in article 8, paragraph 3.
2. Notwithstanding the specified in the first paragraph the ownership of various goods to be delivered will transfer at the moment of down payment of those goods or at the moment that Hertel desires the ownership and it precedes the delivery.
Vendor will then mark the goods as known property of Hertel and safeguard Hertel against loss, damage and exertion of rights by a third party. The goods are for the risk of vendor between the moment of transition of ownership and the actual delivery. Vendor is obligate to protect goods meant in the previous sentence against all risks and ensure them at his account.
3. Hertel has the right, before payment occurs, to desire that vendor in addition to or instead off the ownership transfer that vendor will give an unconditional and irrevocable bank guarantee for his own account through a bank institution acceptable for Hertel, as assurance of the fulfilment of the obligations of vendor.
4. Goods that have been given by Hertel to vendor for repair, processing or adaptation are and remain property of Hertel, but stay with vendor for his account and risk.
5. Vendor guarantees that he has the free and unencumbered ownership with regard to the goods and/or services to be delivered by him and that the goods are not encumbered in any way and free of right of pledge (unless otherwise agreed upon in writing), as well as that no other limited rights rest on it and that a contractual obligation to establish limited rights upon it does not exist.

Article 7. Quality and specification

1. It is guaranteed by vendor that the delivered goods and/or services:
 - a) Are suitable for the intended purpose, if this purpose comes forth from the character of the delivery, or has been mentioned;
 - b) Are in accordance with the specifications as described in the order;
 - c) Meet the requirements, arising from the law valid in the Netherlands or other valid regulations, especially environmental conditions with regard to the materials of which the goods or the packaging of the goods has been fabricated and with regard to the prescribed marking.
2. Vendor is obligated to carry out all changes in the order that are technically possible on the written request of Hertel. Changes in price or delivery time resulting from this will be notified in writing as soon as possible, but at the latest within five days. Should the change result in a new price or delivery time, then Hertel has the right to demand unchanged delivery, or to request for him acceptable changes in price and delivery time.
3. Without prior notice in writing of Hertel vendor cannot transfer or outsource the order or part thereof to a third party. Outsourcing leaves the obligations that the vendor has on account of the agreement towards Hertel without prejudice.

Article 8. Examination

1. Hertel has at all times the right to inspect or examine the ordered goods and/or services before the delivery, where ever. Inspection or approval does not discharge vendor of any guarantee and/or responsibility if this comes forth of the agreement.
2. Hertel has the right to demand from vendor to put its reports of tests and controls and/or material certificates at disposal
3. Neither reception, nor payment of the goods and/or services contain the acceptance of soundness. If it should result that the goods and/or services do not comply with the order, specifications and/or drawings, or the requirements described herein, Hertel has the right to declare the agreement completely or partially annulled, or to request redelivery within a period determined by Hertel, this without prejudice to the right to compensation.
The soundness of the delivered shall be evaluated after each separate delivery. Vendor can therefore not refer to previously delivered, equal goods and/or services that have been approved.

4. Complaints about the soundness of the delivered shall be made known in writing to vendor within a period of thirty work days. This period takes effect on the day that Hertel reasonably has been able to test the soundness of the delivered.

Article 9. Invoicing & Payment

1. The invoicing occurs, mentioning of the order number, at the indicated invoice address after delivery of the goods and/or services, completely specified to number and type.
2. Payment term is 60 days after receipt of the invoice, provided the goods have been received and/or the services have been carried out and Hertel has not made well founded objections to the way of execution before the close of the mentioned period. Payment of the purchase sum does not contain renunciation of any right in any way.
3. Vendor is prohibited to cede, pledge or, under whichever title, transfer the ownership of his claim on Hertel to a third party, unless otherwise agreed upon in writing.
4. Vendor is prohibited to suspend or settle his claim.

Article 10. Guarantee

1. Vendor guarantees the soundness of the delivered during a period of eighteen months after commissioning, but at the latest twenty-four months after delivery. This guarantee does not apply to normal wear or inexpertly use of parts.
2. If Hertel appeals to the guarantee vendor will repair the defects within 5 work days after written notice of Hertel, or proceed to redelivery free of charge. In the absence thereof Hertel is entitled to repair the defect as soon as possible on the costs of the vendor.
3. For that which is delivered for repair the guarantee period commences again at the day of replacement.
4. Vendor guarantees that the goods and/or services delivered by him do not violate the intellectual property rights of third parties, or are unlawful towards such third parties.
5. Vendor guarantees that possible third parties brought in by vendor cannot claim any rights of intellectual property as meant in article 15 paragraph 1 on the goods and/or services delivered by vendor.

Article 11. Liability

1. Vendor is liable for compensation of all damages, both direct and indirect, that Hertel suffers because of or in relation to the execution by vendor of the agreement.
2. Vendor safeguards Hertel against all claims of third parties for compensation of damage as meant in the first paragraph. In this paragraph third parties also contain staff of Hertel and of vendor and those who act on behalf of Hertel or the vendor. The same goes for the claims of third parties in relation to faulty products in the sense of article 6:158 et seq. Dutch Civil Code as well as any (alleged) breach of intellectual property rights with regard to the goods and/or services delivered by vendor.
3. Hertel is not liable for damage or loss with regard to materials, equipment, tools and the like, everything in the most extensive sense of the word, of vendor, neither when such is connected with behaviour of Hertel staff and brought in third parties/ helping persons.
4. Vendor is obligated to ensure himself against his liability and risks as described in the previous paragraphs and on request put the concerning policy at the disposal of Hertel.
5. Vendor safeguards Hertel for every liability concerning the Wet Ketenaansprakelijkheid (Liability of Subcontractors Act).

Article 12. Force Majeure

1. In case of force majeure on the side of vendor, Hertel has the choice to either suspend the fulfilment of her commitment for the duration of the force majeure, or to dissolve the agreement completely or partially without legal interference through a written declaration (see article 14 paragraph 4).
2. For account and risk of vendor come at least, but not exclusively: strike, work to rule, sickness, prohibition on import, export and transit, transport problems, non-fulfilment of the obligations of supplier and production failure with vendor.
3. Under penalty of expiration of appeal vendor should notify Hertel in writing without delay, but at the latest within 3 work days, of the arising of that force majeure situation.

Article 13. Goods made available

All goods which are made available to vendor, such as drawings, models, moulds and tools remain property of Hertel and these will be returned immediately upon request. Without written permission they may not be copied or multiplied, nor in any form or in any way, completely or partially be handed over to third parties for inspection, or be used for third parties. The drawings, models, moulds and tools that have been by vendor are also property of Hertel and the price of that is expected to be included in the purchase sum of the goods, unless agreed otherwise in writing.

Article 14. Termination

1. Hertel has the right to terminate the agreement in the interim through written notice to the vendor. Immediately after reception of the written notice vendor should immediately discontinue the agreement. Hertel and vendor shall then consult about the consequences of such a termination.
2. If vendor fails to comply in the fulfilment of the agreement as well as in case of bankruptcy or judicial settlement and in case of withdrawal, liquidation or takeover or any comparable condition of the company of the vendor, vendor is legally negligent and Hertel has the right a) to terminate the agreement completely or partially unilaterally through a written notice to vendor, b) to suspend payment obligations and c) to assign the execution of the agreement completely or partially for the account and risk of vendor to a third party, everything without that Hertel is held to any compensation and without prejudice to possible other rights accrued to Hertel.
3. All claims that Hertel on account of this article can have or receive towards vendor will be immediately and fully claimable.
4. If the vendor appeals to the non-responsibility of the failure (force majeure) the second and third paragraph apply accordingly.

Article 15. Intellectual property rights

1. All property right arisen within the framework of an agreement, including but not limited to copyright, model rights, trade mark rights, patent laws and database rights, that can arise of or will be executed, this in the most extensive sense of the word rest with Hertel.
2. In case in the framework of the execution of an agreement by vendor specifications, drawings, or other documents are drawn up and/or works are brought about or when the vendor forms, whether or not with the use of goods of Hertel, a new good, or other intellectual property rights arise, they belong to Hertel and the (intellectual) property rights are now for then transferred to Hertel. For as far as required by law these have to apply as an act in the sense of the copyright law. Vendor is hereby obligated to execute all possible (additional) delivery acts at first request of Hertel.

Article 16. Confidentiality

Vendor is obligated to absolute confidentiality towards third parties of all company business in the most extensive sense of the word, included herewith models, drawings, plans, constructions, know-how etc., that has come to his knowledge in pursuance of the assignment.

Article 17. Applicable law & Disputes

1. Only Dutch law applies to the agreement and all agreements that come forth of it.
2. All disputes that should arise as a result of this agreement between Hertel and vendor are, unless the law imperatively determines otherwise, tried before a court with jurisdiction in Rotterdam.
3. Deviating from the specified in the second paragraph Hertel has the right to determine that the dispute is settled by arbitration. In this case arbitration will take place in accordance with the Regulation of the Dutch Arbitration Institute (NAI) in Rotterdam.
4. If these conditions have been translated into a language other than the Dutch language, the Dutch text applies with interpretation dispute.