

General Terms and Conditions Company Ter Halle BV (In this letter T.H.)

Article 1 Applicability

The present General Terms and Conditions shall apply to all quotations and price lists sent out by T.H., as well as each agreement concluded with T.H. If the buyer places an order with T.H., he renounces any of his own general (purchase) conditions, insofar as these conditions are in violation of below-mentioned conditions. The applicability of the buyer's conditions is therefore explicitly rejected.

Article 2 Offers and quotations

All offers by T.H., whether or not sent by T.H. to the buyer in the form of quotations or price lists, are without obligation and shall apply to a delivery ex warehouse or from a third party hired by the user. The buyer is bound by placing an oral or written order, as well as any drawings, sketches, designs or other data the buyer refers to in the order. Cancelling an order or cancelling an agreement is only possible after T.H. has given its written permission. The buyer is always responsible for the correctness of the order, commission, drawings, sketches, designs and data. The buyer is furthermore bound by agreements he or any of his representatives, authorised persons have entered into, any persons of whom T.H. could have reasonably assumed that they were authorised for this purpose.

Article 3 Changes after an order has been submitted

Possible or alleged errors in the order forms, order confirmations or price lists that the buyer has received should be reported to T.H. in writing and within 48 hours after aforementioned documents have been sent out. If the delivery date confirmed by M.T.H is set before aforementioned term, then the (alleged) mistakes c.q. errors in the order forms, order confirmations or price lists should be reported to T.H. in writing and not later than 24 hours before the intended delivery. Writing errors, printing errors or miscalculations give T.H. the right to cancel, c.q. change the orders, order confirmations and price lists. T.H. is authorised to change colours of paintings, quality, quantity, sizes of paintings and so on within reasonable limits.

Article 4 Force majeure and annulment

If the buyer does not, does not reasonably or timely meet a condition ensuing from any separate order, commission or agreement; if the buyer's property is seized; if the buyer has applied for a moratorium or has filed his petition for bankruptcy c.q. is declared bankrupt; if T.H. has good reasons to believe that the buyer shall not be able to fulfil his obligations ensuing from the agreement; if T.H. has reason to doubt the buyer's creditworthiness, or if a situation as described in Article 5 of these General Terms and Conditions occurs, then T.H. is, at its own discretion, authorised to immediately annul the entire or part of any agreement c.q. to suspend any further execution of any agreement without prior proof of default. Cancelling or terminating the agreement does not mean that T.H. forfeits its right to claim a compensation. T.H. is in aforementioned situations furthermore entitled to claim immediate payment of any remuneration due to him.

Force majeure releases T.H. from its obligation(s) ensuing from the separate agreement or temporarily suspends aforementioned obligations. Even after the obligations have been suspended, T.H. is authorised to terminate the agreement on the basis of force majeure. Force majeure is understood to mean every circumstance preventing T.H. from performing the agreement c.q. every circumstance that makes the performance of the agreement problematic, every circumstance due to which compliance with the agreement cannot be reasonably required. Force majeure is – amongst other matters – understood to mean (whether or not) unforeseen shortcomings for which third parties and/or suppliers of T.H. are whether or not accountable for, as well as faulty material, transport problems, breakdown of machinery, strikes and all other circumstances/risks that are not covered by T.H.'s insurance company.

Article 5 Default

If T.H. chooses to terminate, cancel the agreement and/or claim a compensation whether or not before the goods have been delivered, because the buyer has –whether or not intentionally- failed to meet his obligations ensuing from the agreement concluded between the parties, the compensation shall in each case

amount to the order value of the goods, without prejudice to T.H.'s right to sell the goods and claim a compensation equal to the order value of the goods minus the proceeds of the sold goods. T.H. can moreover claim a compensation for the legal interest, consequential loss and loss income, storage costs or demand full compliance with the agreement.

Article 6 Delivery, purchase and transport

The delivery is done:

a) if the goods are collected by or on behalf of the buyer: by giving the goods to the buyer or the person collecting the goods on behalf of the buyer;

b) by sending the goods through a professional transportation firm: by handing over the goods to this transporter.

c) by sending the goods with a transportation means of T.H.: by handing the goods over to the buyer or at the delivery address the buyer has stated.

The buyer should collect the goods at T.H. in accordance with the agreed on collection date. If the buyer has not collected the goods or has refused to collect the goods offered by T.H. no later than five business days after the collection date, then he is in default without this requiring any proof of default and legally obliged to pay T.H. a fine of 500.00 € for each day that he fails to collect the goods, within the scope of amongst other matters, storage costs and extra work for T.H. Aforementioned is without prejudice to T.H.'s right to refer to Article 5 of the General Terms and Conditions. T.H. is moreover entitled to sell the goods to a third party and agree on a new delivery date with the buyer.

Delivery is done through a shipment method of T.H.'s choice, unless otherwise agreed on. The buyer is responsible for the goods as of the time that the goods leave T.H.'s office. The buyer is obliged to accept the goods and check them when they are handed over to him. Any visible defects that are possibly caused by transport should be reported by letter or e-mail to T.H. within 24 hours after the goods have been delivered to the buyer – motivated by means of photos and a description of the defect.

Article 7 Delivery times

Delivery date is understood to mean the date on which the goods are handed over to the buyer by the transporter. Set delivery times are indicative delivery times and never deadlines. T.H. keeps the agreed on delivery times into account to the best of its ability and delivery times only to effect when the buyer has provided T.H. with all required information of documents. Exceeding delivery times does not give the buyer the right to claim a compensation or to terminate the agreement. T.H. handles delivery times as agreed on between the parties. Due to the nature of the company and the products of T.H., T.H. strongly depends on the performances of third parties such as suppliers, transporters as well as customs officers, T.H. can therefore not guarantee that the placed orders shall be delivered entirely and/or timely. If no delivery term has been agreed on, T.H. shall deliver the goods within a –in its opinion – reasonable term. If T.H. has not exercised its right to suspend the performance of the agreement, the buyer can only terminate the agreement upon exceedance of the delivery time if he observes the two month notice period. T.H. can still deliver the goods, entirely or partially, after consultation with the buyer. In which case at least this part of the agreement shall remain in effect.

Article 8 Complaints

The buyer should always check the goods for defects upon delivery. Complaints about defects should be reported to T.H. in writing and within 24 hours after delivery. If aforementioned term has been exceeded, the buyer is no longer entitled to lodge any complaints. Slight and commercially permissible or unavoidable technical deviations in quality, quantity, colour, finish and so on do not give the buyer the right to lodge complaints. If T.H. believes that a complaint is legitimate, then T.H. has the choice to repair or replace the goods within a reasonable period of time, or to credit the value of the goods and take the goods back. Demands to comply with and/or terminate the agreement are out of the question. Suspending payment of other goods is not allowed.

Article 9 Payment

Payment should be done within 14 days after the invoice date, unless the parties have explicitly agreed otherwise. If the payment term is exceeded, the buyer is legally in default and T.H. has the right to charge 1.5% interest per month over the (still) outstanding amount as of the invoice date. In case of partial deliveries, each part can be charged separately. A payment made by the buyer can be applied to the oldest outstanding invoice, regardless of what the buyer states in the payment. Untimely payment of any invoice gives T.H. the right to immediately demand payment of all amounts that have been charged to the buyer on the invoice concerned and any other invoices. T.H. has the right to demand advance payments for delivered and yet to deliver goods, before proceeding with any further delivery.

Article 10 Collection costs

All costs ensuing from measures that M.T.H has to take, legal as well as non-legal expenses, for forcing the buyer to pay shall be charged to the buyer. These collection costs at least amount to 5% of the amount payable by the buyer to T.H. at the time of the first payment reminder or summons and is at least EUR 150.00 for each payment reminder or summons as well as any possible extra costs that T.H. deems necessary to collect the claim. If T.H. hires someone else to collect the amount, the legal and non-legal expenses shall be charged to the buyer as well as the costs for non-legal assistance calculated in accordance with the collection fee set by the Bar [Orde van Advocaten], such also with a minimum of EUR 300.00.

Article 11 Sureties

T.H. has the right to demand an adequate, in the Netherlands enforceable, (bank) guarantee for the fulfilment of the buyer's obligations. T.H. determines the nature and the extent of these sureties and the term in which they should be provided. Until the sureties have been provided, T.H. has the right to not deal with unconfirmed orders or to not deliver a confirmed order.

Article 12 Guarantees

Guarantee obligations, including the obligation to indemnify for hidden defects, should only be fulfilled by T.H., if such has been explicitly agreed on. Settlement by the buyer is out of the question.

Article 13 Retention of title

T.H. retains the title of ownership to all delivered or yet to deliver goods until the following has been completely fulfilled

- a) the buyer's performances and (payment) obligations including interests, fines, compensations, taxes and levies for all goods that have been delivered c.q. have to be delivered by virtue of the agreement;
- b) claims due to the buyer's failure to comply with the agreements.

As long as the ownership of the delivered goods has not been transferred to the buyer, the buyer cannot pledge the goods to a third party, encumber the goods, lend out the goods or sell them. The buyer is moreover obliged to sufficiently insure the delivered goods and to store c.q. keep the goods away from similar goods. If the buyer fails to fulfil his payment obligations towards T.H. or if T.H. has good reasons to fear the buyer shall fail to fulfil his payment obligations, T.H. has the right to take back the goods delivered under retention of title at the account of the buyer. When the goods have been taken back, the buyer shall be credited the market value of the goods, which is in each case never higher than the original purchase price, decreased with the costs for taking the goods back as well as the collection costs.

The buyer is not allowed to sell or transfer the goods delivered under retention of title within the scope of his normal business activities. If the buyer fails to comply with the stipulations referred to in this Article, T.H. has the right to take back the goods belonging to the buyer from the place where they are stored at the buyer's expense. The buyer irrevocably grants T.H. the right to enter the buyer's premises for aforementioned purpose.

Article 14 Sales prices

T.H. provides the buyer with recommended retail prices until the agreement with the buyer has been concluded as referred to in Article 2 of the General Terms and Conditions. T.H. is at all times entitled to adjust the prices in accordance with the market prices, if the prices for transport, material or costs for a third hired by T.H. have increased prior to the delivery.

Article 15 Prohibition on altering the delivered goods

The buyer is allowed to alter the goods delivered to him by T.H. but T.H. explicitly denies any liability for the product/goods altered by the buyer.

Article 16 Liability

T.H. is solely liable for damages suffered by the buyer out of gross neglect on part of T.H., and solely up to an amount that is paid out by the insurance company of T.H., though never more than the invoice or contract amount agreed on between the parties, excl. VAT. T.H. is never bound to pay a compensation for damages, other than to persons or goods. T.H. is moreover not liable for loss of income, consequential loss or damages due to stagnation in company productivity.

T.H. invokes all legal and contractual means of defence, necessary to ward off its own liability towards the buyer, also on behalf of its own subordinates and non-subordinates as well as third parties hired by T.H., for whose actions he would be legally liable. T.H. is only liable for delivered goods, which come from or have been processed by thirds, insofar as this third party has not limited or rejected its liability on the matter. The buyer shall indemnify and hold the seller harmless from any third party claim relating to damages and/or loss suffered in connection with the goods delivered by T.H. T.H. is not liable for the delivered goods if these goods do not meet the legal standards and regulations of the country in which the goods are delivered or used, unless the buyer has explicitly specified aforementioned standards and regulations applying to the goods.

Article 17 Applicable law, forum and choice of domicile

Dutch law expressly applies to all offers, quotations and agreements with T.H. All disputes that arise as a result of or in connection with the agreement governed by these delivery conditions are settled by the competent judge in Almelo, except in the event of appeal.