

# GENERAL TERMS AND CONDITIONS OF SALE, DELIVERY AND PAYMENT

of the private limited company HELMKE BV, Aalbosweg 24, NL-8171 MA Vaassen, trade register number 08048479.

## 1. APPLICABILITY

- All our offers and agreements entered into with us and the performance of those are exclusively governed by the current conditions. Any departures must expressly be agreed with us in writing.
- In these conditions, 'the purchaser' means every (legal) person who, as buyer and/or client, has entered into an agreement with our company or wishes to enter into an agreement respectively and in addition their representative(s), authorised representative(s) and legal successor(s) under singular and/or universal title.
- The applicability of the general terms and conditions in use by the purchaser is expressly excluded.
- By the mere placement of an instruction/order and/or the taking receipt of the delivered goods, the purchaser accepts these conditions and the purchaser is tacitly deemed to have agreed to the exclusive applicability of these conditions in the event of any further orders issued by the purchaser, irrespective of a written confirmation on our part.

## 2. OFFERS

- All our offers are made subject to contract.
- All the information included in price lists and brochures provided by us and our specifications relating to sizes, weights, quantities, capacity and further technical details are stated as accurately as possible. These are only binding on us if and in so far as these have been expressly guaranteed by us in writing.
- Sending offers and/or (other) documentation does not oblige us to deliver goods and/or services. Our official price lists do not constitute a quotation.
- We always reserve the right to refuse orders without stating reasons or to require cash on delivery.

## 3. FORMATION AND PERFORMANCE OF THE AGREEMENT

- Except if and in so far as otherwise stated in these conditions, an agreement is only formed with us after we have received our order confirmation signed by the purchaser in agreement. The order confirmation is deemed to reflect the agreement accurately and comprehensively, subject to written objection by the purchaser within 8 days after the date stated on the order confirmation.
- For work for which, due to its nature and size, a quotation or order confirmation is not customary, the invoice is also considered to be the order confirmation. That stated in article 3.1 last sentence, applies mutatis mutandis.
- In respect of that stated in article 3.1 and 3.2, our records are decisive, subject to written evidence to the contrary.
- Every agreement is entered into on our part on the condition subsequent that the purchaser - exclusively at our discretion - proves to be sufficiently creditworthy for the monetary performance of the agreement.
- We are entitled to engage third parties in the performance of the agreement.
- The purchaser is responsible towards us for the accuracy of the information provided to us by, or on behalf of, the purchaser. This information does not have to be verified by us.

## 4. CHANGES IN ORDERS

- Amendments to contracts are only possible in so far as the performance is technically feasible.
- That stated in article 3 also applies to any additional agreements and/or amendments.
- In the event of changes to an order accepted by us, either due to a further order or as a result of incorrect information provided by the purchaser or due to any other cause, any additional costs arisen and any purchases made unnecessarily due to these changes, are for the account of the purchaser.
- Subject to the obligations of the purchaser referred to in paragraph 3 of this article, we are always entitled not to accept a further instruction to change the original delivery and, in the event of changes to the order due to incorrect information provided by the purchaser, cancel the order for delivery for the not yet performed part.

## 5. PRICES

- All quotations are binding unless price changes have expressly been reserved and in all cases with due observance of the provisions in this article.
- Our prices are, unless expressly indicated otherwise:  
based on the purchase prices of goods and raw materials, wages, levies by government and institutions considered similar to such and of costs of third parties, in force at the time of the quotation or order date respectively;
  - exclusive of purchaser's surcharge, which is determined on the day the agreement is entered into;
  - exclusive of VAT;
  - exclusive of the costs of assembly and putting into operation;
  - exclusive of cost of insurance;
  - stated in euros.
- If, after submission of the quotation or the entering into of the agreement, the prices of raw materials and/or required material, shipping costs, energy costs, insurance premiums, wages, national insurance contributions, taxes, import duties, excise duties, exchanges rates and/or other price determining factors undergo increases, we are entitled, even if these increases were foreseeable at the time of entering into the agreement, to increase the agreed price accordingly.
- Costs of third parties, arisen in the performance of the agreement, are for the account of the purchaser.

## 6. DELIVERY

- All (delivery) times stated by us are indicative only and determined to the best of our ability but without obligation. Failure to meet a (delivery) time as stated by us does not entitle the purchaser to compensation, suspension or non-performance of his obligations and/or termination of the agreement, unless the exceeding occurs due to an intentional act or gross negligence by our management board.
- The delivery time commences when - after receipt by us of a written order confirmation as signed by the purchaser for agreement - all our conditions set out in the agreement including - possibly - those relating to full or partial advance payment or the provision of security, are satisfied and when the purchaser has met all his obligations towards us and in addition written agreement has been obtained on all technical details and after all the information and documents deemed necessary by us, including - possibly - the information and/or drawings to be provided by the purchaser are in our possession.
- We are entitled to deliver the goods in consignments (partial deliveries), which we may invoice separately. The purchaser is then obliged to pay in accordance with the provisions set out below under 'payment'.
- Without prejudice to the retention of title set out in article 11, the delivery is only deemed to take place when the purchaser has been notified in writing that the goods are ready and are at his disposal or, failing such notification, the moment of handing over of the goods.
- The goods are at the risk of the purchaser from the moment of the notification referred to in paragraph 4 or from the moment of handing over or dispatch or transport by us or third parties ex company/warehouse. If for a project we have ordered specific goods from our supplier, these goods are, however, already at the risk of the purchaser if they have left the warehouse or the factory of our supplier.

- The purchaser is obliged to inspect the delivered goods or the packaging immediately on delivery for any shortcomings or visible damage, or to have this inspection carried out immediately after notification on our part that the goods are at the disposal of the purchaser.
- The purchaser must state any shortcomings of, or damage to, the delivered goods and/or packaging present on delivery on the delivery note, the invoice and/or the transport documents (or have such done) and notify us of such in writing in any case within 8 days from delivery.
- If after the expiry of the delivery time, the purchaser has not taken delivery of the goods, they are stored at the risk and for the account of the purchaser. After a period of four weeks we are entitled to proceed to a (private) sale of these goods. Any reduced proceeds and the costs are for the account of the purchaser, without prejudice to our other rights.

## 7. TRANSPORT/RISK

- If it is agreed that we are responsible for the transport and the purchaser does not give any specific instructions, the transport, shipment and/or the packaging will, to the best of our knowledge and ability, be handled by us without us carrying any liability in this respect. Specific requirements of the purchaser in this respect (express delivery, courier, etc.) are only carried out if, and after, the purchaser has declared to be accountable for the accompanying additional costs.
- The transport of the goods always takes place for the account and at the risk of the purchaser except and insofar as expressly agreed otherwise with us in writing.
- In the event of delivery carriage paid, the transport costs are not charged on separately.

## 8. PAYMENT

- Unless otherwise indicated by us, all payments must be made, without any discount, suspension or settlement, in Dutch currency by means of payment or transfer into our bank account. If no payment term has been set, the payment term is 30 days from the invoice date. The value day stated on our bank statements is decisive and is therefore considered to be the payment date.
- An increase of the originally agreed price in connection with that stated in article 4, 5 and 7 must be paid at the same time as the principal sum.
- For the goods and/or services to be delivered by us, we are entitled to set out a payment schedule in advance in the order confirmation/agreement.
- We are at all times entitled, before delivering or to continue delivering or to start or continue with the performance of an order, to demand sufficient security - such as our exclusive discretion - for the performance of the payment obligations of the purchaser, even if later payment than usual or payment in instalments has been agreed. Refusal by the purchaser to provide the requested security entitles us to terminate the agreement or to suspend our obligations, without prejudice to our right to compensation of the incurred costs, loss of profit and any possible loss suffered or to be suffered by us.
- From the moment any amount due to us has become due and payable, we are entitled, without prejudice to our rights to compensation and interest, to declare the agreement and all other agreements entered into with the purchaser terminated without any prior notice of default or judicial intervention being required. Our ownership rights remain fully in force or are fully revived such that we are entitled to retrieve the relevant goods (or have such done) in accordance with the provisions under 'retention of title'.
- Every payment by the purchaser will in the first instance serve to settle any interest due by the purchaser and the collection costs and/or administration costs incurred by us and is then applied to reduce the oldest outstanding invoice.
- All our existing and future claims on the purchaser are in any event, even if later payment than usual, postponement of payment or payment instalments has been agreed, immediately due and payable with all due interest and costs and without any prior notice of default being required if the purchaser has not paid any amount payable by him in due time, has been declared bankrupt, has applied for a moratorium, goes into liquidation, is dissolved or dies, a guardianship order or administration order of his affairs is applied for, or his goods or claims are seized. In such cases we are also released from any still existing delivery obligations towards the purchaser.
- Regulations by any government or other circumstances which impede the use, wholly or in part, by the purchaser of the goods to be delivered or complaints about the delivered goods, do not result in a change in the payment and/or other obligations of the purchaser towards us.

## 9. INTEREST AND COSTS

- If payment has not occurred within the term set out in the previous article, the purchaser is in default by operation of law and from the due date, without any notice of default being required, shall pay interest of 1% per month on the still outstanding amount. In which respect, part of a month counts as a full month.
- If an invoice has not been paid within the agreed payment term, we are entitled to have this invoice collected. In that case all of our other invoices become immediately due and payable without any further notice of default being required.
- If an invoice is handed over by us for collection, the costs associated with that, both at law and otherwise, are fully for the account of the purchaser. The extrajudicial costs are 15% of the full overdue amount, all this with a minimum of EUR 250. The mere fact that we have transferred the collection is evidence of the amount of and the obligation to pay the extrajudicial costs.

## 10. IMPRACTICALITY OF THE AGREEMENT

- If we are unable to perform an order, or to perform it on time or in full, due to force majeure or due to other circumstances - of whatever nature - which were, or could not have been, known to us at the time of the confirmation of the order, we have the choice of being either entitled to cancel this order either wholly or for the non-performed part, or to suspend the (further) performance of such or to demand that the order is changed to such an extent that its performance remains as yet possible.
- If the order has been partly performed by us and subsequently is cancelled or suspended by us for the non-performed part, the agreed price must be paid pro rata for the performed part of the order within the term which would have applied in the event of full performance of the order.
- If the order is changed, any arisen additional costs, unnecessary purchases and loss of profit are for the account of the purchaser.
- Force majeure includes all circumstances, events, causes and consequences falling beyond our control or power, which means that the delivery or performance is temporarily or permanently impeded such as, but not limited to, failures and stagnations within our company and during the delivery and performance, strikes, boycotts or similar action, government measures which may affect our performance, judicial prohibitions and seizures including the failure to deliver, not proper or late delivery by persons or businesses from whom we procure our goods or services, war, threat of war, civil war, terrorist threat or attacks, riot, fire, floods and sickness of our personnel or third parties engaged or to be engaged by us in the performance of the instruction.

## 11. RETENTION OF TITLE

- We remain the owner of all delivered, or still to be delivered, goods as long as the purchaser has not paid our invoices in respect of the consideration of this agreement or of another agreement with us for the delivery of goods and as long as the purchaser has not paid the work carried out or still to be

carried out under these agreements and as long as the purchaser has not paid the invoices due to the failure in the performance of these agreements, which includes claims relating to fines, interest and costs.

- The purchaser is obliged to keep the relevant goods carefully, separated from other goods and recognisable as our property and to keep them properly insured.
- As long as this ownership right has not been transferred, the purchaser may not grant security or other rights in respect of these goods to third parties.
- If the purchaser does not meet his obligations towards us or there are good grounds on our part to fear that this will be the case, or if the purchaser is declared bankrupt, has applied for a moratorium, is being liquidated, dissolved or a guardianship order or administration order is applied for, or his goods or claims are seized, we are - always without any prior notice of default being required - entitled to keep the processed goods or goods that are still being processed, including goods given to us by the purchaser for processing, and also to retrieve (or have such done) already delivered goods which have remained our property without judicial intervention being required - possibly after disassembly - from the location where they are being kept and subsequently keep possession of the relevant goods in all cases until the purchaser has complied with all his obligations towards us. In that event, we are entitled to consider the agreement(s) entered into, insofar as not yet performed by us, as being terminated without prejudice to our rights to compensation.

#### 12. COMPLAINTS

- Without prejudice to the provisions elsewhere in these conditions, all complaints must be submitted to us by telephone, by fax or by e-mail within 24 hours after delivery and within eight days after delivery in writing stating the precise nature and ground of the complaints. For invoices, the time limit for complaints is eight days from the date of invoice.
- For complaints relating to hidden defects, there is a maximum term of three months after delivery, whilst such complaints must then be submitted within eight days from discovery.
- After expiry of this term/these terms, the purchaser is deemed to have approved that which has been delivered or the invoice respectively. Complaints are then no longer dealt with by us.
- The alleged non-performance by us of any obligation does not release the purchaser from his payment obligation towards us, arising from whatever agreement, and does not entitle the purchaser to suspend his obligations towards us.
- Returning the delivered goods can only take place after our prior written permission, under conditions to be determined by us.
- We will only process complaints if the purchaser has complied with all his obligations towards us.
- In the event of complaints, the purchaser must give us the opportunity to assess the situation on location and remedy the complaints. This paragraph does not put us under an obligation to investigate or remedy the complaints.

#### 13. LIABILITY

- Unless there is an intentional act or gross negligence by our management board, we are - except if and insofar as a mandatory statutory provision determines otherwise - not liable for any direct or indirect loss suffered whatsoever, arisen due to, or connected with, the work or services carried out by us or goods sold by us.
- Contrary to the above, we can be held liable if and insofar as there is a claim for compensation for the relevant loss on the basis of a business liability insurance as taken out by us. This stipulation does not oblige us to take out and maintain such insurance.
- In the event of our liability, this liability is always limited to maximum the invoice amount of the delivered goods or services in relation to which the liability has arisen.
- We are never obliged to pay compensation for consequential loss, business interruption loss, loss of profits or any other indirect loss whatsoever.
- We are never liable for loss arisen as result of work carried out by the purchaser or by third parties on instruction of the purchaser.
- The purchaser is obliged to pay all costs, loss and interest which may arise for us as a direct or indirect consequence of the claims by third parties, which may be submitted against us in respect of the performance of the agreement with the purchaser. The purchaser shall also indemnify us against this.
- If we are held liable for loss, caused as a direct or indirect result of goods delivered by us which we have procured from third parties, we can in all cases be released from our liability by a transfer of our (possible) claims on those third parties to those who are holding us liable.
- The same exclusion of our liability and the same obligation of the purchaser to pay compensation and grant an indemnity as set out in this article, is also stipulated for all those who we have engaged in the sale and/or performance of the work or who have been engaged in the performance of the transaction by us in any other way.
- We are only obliged to pay the costs of the repairs carried out by the purchaser if and in so far as we have given the purchaser written permission for this repair and this repair has been carried out in accordance with the plan approved by us in writing.
- If during repair or replacement by us it becomes apparent that such is required as a result of a cause for which we are not liable, we are entitled to invoice all our costs in this respect (including investigation costs) to the purchaser and to demand an advance from the purchaser for this. We are entitled to suspend all our work until this advance has been paid to us.

#### 14. GUARANTEE PROVISIONS

- If we have given a guarantee, only our guarantee conditions apply. We will send these to the purchaser immediately and free of charge on request. The text of the guarantee conditions can be found on our website [www.helmke.nl](http://www.helmke.nl).
- For those parts for which we have expressly indicated this in writing, the manufacturer's warranty applies. In the event that a manufacturer's guarantee applies, this will replace any guarantee on the basis of these conditions or our guarantee conditions.
- If and insofar as our suppliers have given us a guarantee on the products purchased by us and these suppliers, after a complaint by our purchaser accepted by us, in the relevant case have honoured a reliance by us on this guarantee, the purchaser has towards us a claim for a transfer of our guarantee rights towards the relevant suppliers. In that event, the purchaser has no further claims against us.

#### 15. OWNERSHIP OF DOCUMENTS

If we have not received instructions for the performance of work for which we have submitted an offer, as well as in the event that an order has been carried out in full, is cancelled or is not carried out further, all the designs, images, drawings, sketches, calculations, descriptions, construction and manufacturing details belonging to the quotations and agreements and the quotations themselves and all copies made of such must be returned to us within 14 days after it has been decided not to issue the relevant order or the order is carried out or cancelled and the performance of such has ceased.

#### 16. TRADEMARKS

The industrial and commercial trademarks and the type and identification numbers or marks which have been attached by the manufacturer or by us to the delivered goods may not be removed, damaged or changed.

#### 17. VOIDNESS OR VOIDABILITY

If one or more provisions of these general terms and conditions are void or are voided, this leaves

the applicability of the other provisions unaffected. In the event of voidness or nullification, the void or voided provision will be replaced by a provision which approaches the economic consequences of the void or voided provision as far as possible.

#### 18. APPLICABLE LAW AND COMPETENT COURT

- All our quotations and all agreements entered into by us are exclusively governed by Dutch law.
- Any disputes arisen as a result of an offer made by us or an agreement entered into between us and the purchaser or any agreement derived from such - including those disputes which are only considered to be a dispute by one of the parties - are in the first instance exclusively submitted to the ruling of the District Court of Zutphen, leaving the option of seeking appeal unaffected.
- We reserve the right to have a dispute with a foreign purchaser heard by a competent foreign court and to involve a Dutch purchaser in proceedings before a foreign court between ourselves and one of our suppliers.

#### 19. FILING

These conditions have been filed on 26 February 2008 with the Chamber of Commerce East Netherlands in Apeldoorn under number 08048479. A copy of these conditions will immediately be sent to the purchaser free of charge on the purchaser's request. The text of these conditions can also be found on our website [www.helmke.nl](http://www.helmke.nl).

#### GUARANTEE CONDITIONS HELMKE BV

If the private limited company Helmke BV, Postbus 195, NL-8170 AD Vaassen - hereinafter also referred to as Helmke - provides a guarantee on the services it has rendered and the goods it has sold, the order confirmation from Helmke to the client (including those who purchase from Helmke) states that Helmke provides a guarantee and also states the duration of this guarantee. If a guarantee is provided, the following conditions apply:

- Helmke guarantees for the guarantee period referred to in the order confirmation, commencing on the day of the delivery, exclusively under the conditions set out below, the proper execution of the agreed performance.
- In so far as these guarantee conditions do not determine otherwise, in all cases the general terms and conditions of Helmke apply in addition to this guarantee.
- A reliance on the guarantee must - at the risk of forfeiting the right to guarantee - in all cases be made by the client immediately after it has discovered the shortcoming in writing or by e-mail to Helmke.
- Excluded from the guarantee is all consequential loss - including consequential loss which arises from repair work - and all indirect loss including, but not limited to, business interruption, stagnation, evacuation costs and damage to other objects, all this in the widest sense of the word. Excluded from the guarantee is loss as a result of natural disasters, war, uprising, molest and terror or comparable events or events with comparable effects.
- The goods delivered by Helmke which are located outside the Netherlands only fall under the guarantee if and after these goods have been delivered by the client carriage paid - at the discretion of Helmke - either to Helmke in Vaassen, or to another company belonging to the Helmke group outside the Netherlands.
- No guarantee is given for defects which are the result of:
  - improper use or careless use or use contrary to the user manual;
  - use other than for the normal business operations of the client;
  - maintenance not being carried out or incorrectly carried out;
  - installation, assembly, change or repair by the client or by third parties;
  - normal wear and tear.
- No guarantee is given for goods delivered which were not new at the time of delivery except if and insofar as Helmke has expressly stated on the order confirmation and/or invoice that they are covered by the guarantee.
- If the agreed performance consists of contracting work, Helmke guarantees for the period referred to in article 1 the soundness of the delivered construction and the used materials, provided Helmke was free in the choice of those. If in that case it appears that the delivered construction or the used materials are not sound, Helmke will repair or replace them. The parts to be repaired or replaced by Helmke must be sent to Helmke carriage paid.
- If the agreed performance consists of the processing of the materials delivered by the client, Helmke guarantees for the period referred to in article 1 the soundness of the performed processing.
  - If it appears that processing has not been carried out soundly, Helmke can make the choice whether it:
    - carries out the processing again. In that event, the client must for its own account supply new material;
    - repairs the defect. In that case, the client must return the material to Helmke carriage paid; credits the client for a proportional part of the invoice.
- If the agreed performance consists of the delivery of a good, Helmke guarantees for the period referred to in article 1 the soundness of the delivered good. If it appears that the delivery was not sound, the good must be returned to Helmke carriage paid. After receipt of the good and in the event of acknowledgment of the guarantee, Helmke can make a choice whether it:
  - repairs the good;
  - replaces the good;
  - credits the client for a proportional part of the invoice.
- If the agreed performance consists (partly) of the installation and/or assembly of a delivered good, Helmke guarantees for the period referred to in article 1 the soundness of the installation and/or assembly. If it appears that the installation and/or assembly has not been carried out soundly, Helmke will rectify this.
- In all cases where the client has sent goods to Helmke on invoking the guarantee and these goods are again sent by or on behalf of Helmke, these goods will be sent for the account of and at the risk of the client.
- For those parts for which Helmke has expressly indicated this in writing, a manufacturer's guarantee applies. In the event a manufacturer's guarantee applies, this will replace the guarantee on the basis of these conditions.
- The client must in all cases give Helmke the opportunity to rectify any defect or to attempt to carry out the processing again.
- The client can only rely on the guarantee after it has complied with all its obligations towards Helmke and after it has paid Helmke the full invoice amount. The client is not entitled to refuse to make payment wholly or in part on the basis that Helmke has not (yet) or not fully complied with its guarantee obligations.

Even if the guarantee is invoked within the agreed payment period, the client will comply with the agreed payment period. This is only different if and insofar as Helmke has confirmed this in writing to the client.

#### Please note:

These general terms and conditions of sale, delivery and payment, and these guarantee conditions are translated from the original Dutch text. In the event that it contains substantively conflicting provisions or conditions which could be interpreted differently, the Dutch text is binding.