



General terms and conditions of sale Heras b.v.

(Chamber of commerce no.: 17043602)

ARTICLE 1: DEFINITIONS

In these Terms and Conditions of Sale ("the Conditions"), the following terms have the meaning given to them below:

- **Heras:** Heras B.V.
- **Client:** The other party to transactions with Heras. If there are two or more Clients, they are jointly and severally liable for fulfilling all obligations towards Heras.
- **Parties:** Heras and Client.
- **Agreement:** The agreements laid down in writing between Heras and Client.

ARTICLE 2: APPLICABILITY

- 1 All offers made and/or to Heras, all Agreements concluded with Heras and the performance thereof, and all other obligations with Heras, are exclusively governed by these Conditions.
- 2 Departures from the Conditions are valid after these are expressly confirmed by Heras to Client in writing only.
- 3 If there is any discrepancy between the provisions of an Agreement between Heras and Client and these Conditions, the provisions of the Agreement prevail.

ARTICLE 3: OFFERS

- 1 All offers and quotations are based on the information submitted by Client with its request, irrespective of the form in which this information is given.
- 2 All offers and quotations are subject to contract and may be adjusted by Heras without prior notice.
- 3 Heras reserves the right to charge any costs incurred in the preparation of an offer and/or quotation in the event that the offer and/or quotation is not accepted and consequently no agreement is concluded between Heras and Client.
- 4 The Agreement between Client and Heras is formed upon written confirmation by Heras. In the absence of an order confirmation, the fact that the Agreement is formed appears from the fact that the work is being performed or prepared, as the case may be, by Heras.
- 5 If an order has been placed by the Client, it may be delayed once by up to one week. For further delays after this period, Heras shall charge 1% of the principal sum for each week of delay.

ARTICLE 4: PRICES

- 1 All quoted and agreed prices are subject to turnover tax, import and export duties, and any other taxes, duties and rights due, and exclusive of any additional costs.
- 2 If the event of a change in one or more cost deciding factors, e.g. purchase prices for commodities and materials, exchange rates, wages, taxes, rights, charges, freight, etc., after the offer was made or after the Agreement was formed, Heras may adjust the prices it has quoted accordingly. In such event Client is not entitled to terminate the Agreement in any way.
- 3 The agreed prices of the work to be performed by Heras refer solely to the work and deliveries as described in Heras's order confirmation. All additional work and/or deliveries, irrespective of their nature, shall be for Client's account. Heras will only be required to perform the latter if the parties have concluded a separate written agreement in this regard. However, Heras will at all times be allowed to charge Client any contract extras.

ARTICLE 5: PERFORMANCE OF THE AGREED WORK

- 1 All agreed prices are based on assembly in or on, as the case may be, a site that is free of obstacles, and of which the condition of the soil is such that the ordered work may be performed in accordance with the standards as applied by Heras. The site must in any event meet the following conditions:
 - a The site must both on and in the soil be free of pavement and/or paving, rubble, sewerage, ditches, very hard clay, rock-like substances, old foundations, tree stumps or roots, vegetation, groundwater at a level higher than 60 cm below surface area, and for the rest anything that may require cutting or breaking;
 - b On the outside of the fence to be erected there must be a free working space equal to the height of the fence + 50 cm. On the inside of the fence there must be a free working space of at least 50 cm;
 - c On all sites on which the fencing is to be erected level, the land must have been equalised;
 - d The entire site must be accessible to such extent that it is possible to unload materials from lorries at various locations, so that the maximum distance for carrying materials does not exceed 150 meters;
 - e Heras must be notified in writing timely in advance of the presence of cables, pipes, wiring, tubes, etc. It is emphasised that these cables and pipes, etc., must be clearly marked at the correct spots, by means of pegs;
 - f At the site or the location where the work is to be performed gas, water and electricity, heating, and all other facilities prescribed under the Health and Safety Act must be available;
 - g Client shall in no event be entitled to invoke that the site does not meet the conditions mentioned in article 5, under a to f, or that Heras or its representative had inspected or could have inspected the site.
- 2 The agreed price for the work to be performed by Heras does not include the following. Any work required due to the following are for Client's account, unless specifically agreed otherwise in writing, whereby all extra work to be performed by Heras will be described separately:
 - a Work to bring the site in the state as described in paragraph 1;
 - b Returning sods of grass and/or pavement (or any other paving) removed by Heras;
 - c Removal of the excavated soil or other materials, or waste removal;
 - d Supplying, laying, and connecting feeder cables and control current cables for electrically powered fence components;
 - e Costs in connection with compliance with the Dutch Exchange of Information on Underground Networks Act.
- 3 As regards the performance of the work, it is specifically provided:
 - a That the site on which the fences and/or gates are to be erected must meet the conditions mentioned in paragraph 1 at least one week before assembly starts;
 - b That fences and/or gates will be erected on the line and at a height indicated by Client before the start of assembly by means of pegs, which may not be removed until the work is completed; that if this has not been done, the fences and/or gates will be erected on the basis of the available information;
 - c That an authorised representative of Client must be present upon the start of the work and at the completion; if no authorised representative is present, the work will be regarded as having been completed correctly;
 - d That if assembly cannot proceed regularly and without interruptions through no fault of Heras, or is delayed in any other way, Heras may charge any resulting additional costs to Client on the basis of the general rates applied by Heras;
 - e That any traffic-related measures, demarcations, markings, lighting signals, directions for traffic/pedestrians, etc. to be taken in relation to the assembly work performed by Heras shall be taken by and for Client's account. The responsibility for the foregoing rests with Client, who is required to guarantee Heras that assembly may proceed safely and undisturbed;
 - f That any stop blocks placed by Heras in connection with gate latches may require the pavement to be elevated to the proper height and that this work is in no event included in the agreed price

- g or in the work to be performed. Heras expressly excludes this work or any responsibility for it;
 - g For the rest, Client must ascertain whether any (municipal/local) authorities requirements exist that must be complied with in connection with the fencing to be erected. Heras shall in no event be liable for this or accept any responsibility in this regard.
 - h Any costs to be incurred by Heras due to the failure of Client to fulfil the obligations mentioned in this article, or to do so fully and/or in time, are for Client's account.
- 4 Client shall at all times (timely) ensure that all permits and exemptions required for the performance of the work are granted.

ARTICLE 6: DELIVERY AND PERFORMANCE TIMES

- 1 Unless explicitly agreed otherwise, any delivery/performance time stated by Heras shall in no event be regarded as a strict deadline. Delivery or performance periods commence once the Agreement is formed, all information necessary for the performance of the work is in Heras's possession, and all payments to be made upon concluding the Agreement have been received.
- 2 The delivery/performance periods are fixed on the expectation that the circumstances under which Heras is to perform the work allow an unobstructed performance, and specifically on the expectation that Client has complied with its obligations as mentioned in the previous article. The delivery/performance time will in any event be adjusted, if:
 - additional work or contract extras are required;
 - the work is to be performed during different periods and/or times and/or weather and working conditions than were taken into account when concluding the Agreement. Any costs made in connection with the foregoing shall be for Client's account;
 - circumstances occur at Heras's that could not be foreseen at the time of concluding the Agreement or at the time of starting the performance. Client shall not be allowed to charge Heras extra costs in this connection.
- 3 Client may only claim compensation and/or termination of the Agreement if it is expressly agreed in writing that a deadline is a final deadline and Heras has not completed the order by this deadline, provided that Client shall have given Heras, by notice sent by registered post, a reasonable period of at least 14 days to fulfil its obligations as yet, unless exceeding the deadline is due to an event of force majeure.
- 4 In order to determine the completion of the work, the work will be inspected by Heras together with Client or someone on Client's behalf. Completion is considered to have taken place after Client has signed the completion statement given to it by Heras. If Client or its representatives are not present at the completion at the agreed time, the work will in any event be considered to have been completed with Client's full and unconditional approval.
- 5 If Client rejects the work as a result of which the work cannot be completed, Heras will be given the opportunity to complete the work as yet. Client shall state in writing to Heras those items that prevent a proper completion. Any delays in providing these items shall not be for the account and risk of Heras.

ARTICLE 7: PAYMENT

- 1 Unless otherwise agreed, all invoices submitted to Client by Heras are payable within 30 days after the date of the invoice. Payment is to be effected by transfer or payment to a bank account to be communicated by Heras. Unless explicitly agreed otherwise, all payments are due in euro and shall include turnover tax. The value date stated on the bank statements of Heras or of a third party authorised by Heras to receive payment shall be decisive for determining the day of payment.
- 2 Client is not allowed to any set-off, howsoever named, unless Heras has explicitly agreed to this in writing.
- 3 If the amount that is due according to an invoice has not been paid within the period mentioned in paragraph 1, Client will be in default without any demand or notice of default being required and will owe interest as from the invoice date on the entire outstanding amount equal on an annual basis to the statutory interest in accordance with Section 6:119a in conjunction with 6:120 Dutch Civil Code plus 2%.
- 4 All judicial and extrajudicial costs involved in collecting any payment due under an invoice shall be for Client's account. Such judicial and extrajudicial costs shall include, inter alia, attorneys' fees, the costs of the proceedings, of experts and of all parties instructed by Heras in connection with the collection.
- 5 After the formation of the Agreement Heras may stipulate that Client provides security in a form and for an amount to be decided by Heras at its own discretion, if Heras has good grounds to fear that Client will not be able to fulfil its payment obligations to Heras or to do so in time. Client shall be obliged to cooperate with such request. If and for as long Client does not provide security, Heras may suspend performing its obligations or terminate the Agreement, as the case may be.

ARTICLE 8: RETENTION OF TITLE; TRANSFER OF RISK

- 1 All goods delivered and to be delivered by Heras to Client remain the property of Heras until Client has fulfilled all obligations, on any ground, also with respect to any claims Heras may have against Client due to Client's failure to fulfil its obligations towards Heras, including but not limited to loss, interest, costs (directly or indirectly) suffered or incurred by Heras as well as any loss due to decrease in value of the goods delivered and to be delivered.
- 2 Client is not allowed to alienate, encumber with a restricted security right or right of enjoyment, or withdraw from recovery by Heras, any goods that are subject to retention of title.
- 3 If Client fails to fulfil any of the obligations in this or any other article of these Conditions, Agreement or any other obligations, Heras may, without notice of default or judicial intervention being required, take possession of the goods that are still its property due to its retention of title or remove and take away any fences, gates, etc. that have already been erected. Any costs incurred by Heras in this regard shall be for Client's account, in addition to Client's obligation to compensate the other costs as referred to in paragraph 1 of this article.
- 4 Client shall immediately notify Heras of any attachment that is levied on its moveable or immovable property, and of its bankruptcy, if its granted a moratorium and of any other circumstances and/or events that may have a negative impact on Client or Heras in the regular performance of the Agreement, and also to immediately inform the trustee, administrator or bailiff who levies attachment of Heras's retention of title.
- 5 The risk to the goods to be delivered to or installed at Client passes to Client as soon as the goods are delivered on the site on which they are to be delivered or installed. Client shall ensure that the delivered goods are properly insured and secured.
- 6 Client now for then gives in lien to Heras all goods delivered by Heras the property of which has passed to Client, either by specification, accession, confusion, or otherwise. Heras shall at all times be entitled and is herewith irrevocably and unconditionally authorised by Client, to execute all (legal) acts necessary to create this reserved lien (including expressly, but not limited to, the creation of the lien by authentic or registered private deed) and also to act in that respect on behalf of the supplier.

ARTICLE 9: WARRANTY; COMPLAINTS

- 1 Heras warrants that the delivered and/or installed goods will be free of defects due to errors in the production and/or materials for a period of twelve (12) months after delivery or completion, as the case may be, unless otherwise agreed in writing. The warranty will only be valid if Client has returned the signed order confirmation to Heras.
- 2 The liability under the warranty referred to in paragraph 1 above is limited to remedying the defects



that have occurred during the warranty period to materials or finishing by repairing or replacing them (whereby the warranty shall in no event exceed the original invoiced amount or the costs of the goods concerned), or by crediting that part of the invoice to which the claim for warranty pertains, all this at the discretion of Heras.

- 3 In the event that Heras, in the execution of its obligations, has purchased goods from third parties, the warranty offered will not exceed the warranty offered by such third parties, even if this would result in the period referred to in paragraph 1 above being reduced.
- 4 Excluded from warranty are defects to materials that are prescribed and/or made available by or on account of Client. For the purpose of this paragraph, non-suitability for the use for which the prescribed materials and/or parts are intended by Client will be equated with a defect. Nor will Heras be liable under its warranty obligations if the work does not function properly due to a defect in a design, construction, or method prescribed by Client.
- 5 The entitlement to warranty immediately lapses in each of the following instances:
 - the operating or user instructions are not correctly observed or the delivered object is not used for its intended purpose;
 - insufficient maintenance that may be attributed to the fault of or that is for the account of Client;
 - assembly and/or repairing and/or putting into operation of the delivered goods by Client or a third party without the express consent of Heras;
 - making modifications to the work, or having them made by third parties.
- 6 The warranty does not apply if and for as long as the other party fails to fully fulfil all of its obligations towards Heras. Once the other party has resumed doing so, the warranty will return in force with retroactive effect.
- 7 Except for the above-described warranty, Heras shall have no other obligations to repair or to replace. Parts replaced by Heras in compliance with its warranty obligations, will become its property.
- 8 Any complaints regarding visible defects to delivered and/or installed goods or regarding the completed order will only be considered if stated on the completion statement. Any complaints regarding non-visible defects to delivered and/or installed goods or regarding the completed order must be reported to Heras within 14 days after they have come to light or within 14 days after they should reasonably have come to light, immediately in writing stating exactly the nature and reason for the complaint.
- 9 The onus or proving the timely submitting and the correctness of the complaint rests on Client. Client shall offer Heras every assistance in the investigation of the defects.
- 10 Client is not entitled to suspend its obligations towards Heras in the event it has submitted a complaint.

ARTICLE 10: CHANGES; CANCELLATION

If the work which Heras is instructed to carry out or the deliveries it has to make are to be executed at another than the agreed time or in another than the agreed manner, Heras will be entitled to adjust the agreed price, inter alia with due observance of the then applicable rates and prices, and to pass on any other costs, or to terminate the Agreement without judicial intervention being required. Orders for which goods are specifically manufactured may not be cancelled. If, for any reason, Client wishes to cancel the Agreement and Heras agrees thereto, Client will owe Heras a cancellation fee of 20% of the agreed price, or, where only part of the Agreement is cancelled, a corresponding part thereof; this fee shall not cancel Heras's right to demand additional and full compensation.

ARTICLE 11: INTELLECTUAL PROPERTY

Heras reserves all industrial and/or intellectual property rights to all designs, illustrations, drawings, sketches supplied with the offers. These documents remain its property and may not be copied, disclosed to third parties, or used in any other manner without its express permission. All intellectual property rights to (components of) goods supplied or otherwise made available by Heras (including documentation) rest with Heras or with its supplier(s). In so far as (components of) these goods are protected by any intellectual property right or a comparable right, Client will only be granted the right of use and the entitlement expressly granted in this article. Client is solely entitled to use the relevant (components of) goods within its organisation in a manner that is to be deemed normal for such type of organisation. In so far as the goods concerned include computer programmes, switches, documentation, etc., Client is not allowed to translate, modify, decompile, disassemble, copy, or (otherwise) reconstruct same without the prior written permission of Heras, unless this is allowed pursuant to mandatory provisions. In so far as the goods concerned include non-integrated computer programmes, Client has the right, unless Heras makes a reserve copy available, to keep one reserve copy of that programme. Client is not allowed to alter or remove in any way notices referring to copyright, patent right, trademarks, trade names or any other intellectual property rights on or from the goods concerned. Heras declares that to the best of its knowledge the goods concerned do not infringe any third-party intellectually or industrial property rights that are applicable in the Netherlands. In the event that a claim due to infringement of such rights is brought or if the possibility that this may happen exists, Heras may, at its own discretion, inter alia replace or alter the goods concerned, or acquire the right to continue using same, or recover them entirely or in part against repayment of the price paid for them by Client to Heras, after deducting a reasonable sum in respect of depreciation. Client shall immediately notify Heras in writing of any claim of liability or legal action, based on the assertion that the use of the goods concerned constitute an infringement of any intellectual property right applicable in the Netherlands. Heras may, but is not required to do so, conduct the defence in proceedings based on an alleged infringement as referred to in the previous paragraph, with the exclusion of Client, or to reach a settlement in this regard. In that event Heras will pay the costs and compensations stipulated by court decision or with respect to the settlement. Heras does not accept any liability towards Client due to infringement as referred to in the previous paragraphs of this article, if such infringement is related to the fact that Client has modified or altered the goods concerned, or had third parties carry out these actions, or to the fact that Client uses the goods concerned together or in combination with products that have not been made available by Heras, or to the fact that Client has used them in a manner that is different from the manner stated in the documentation etc. If and in so far as the goods concerned that are made available to Client are accompanied by documentation, users' manuals etc., in which Client's rights of use with respect to them and the rights of recourse related thereto, are restricted more than is provided for in this article, the relevant provisions prevail over the provisions of this article, unless this would be contrary to mandatory provisions.

ARTICLE 12: TERMINATION

- 1 If:
 - a Client fails to fulfil any obligation it has towards Heras, or fails to do so in time or correctly, specifically the obligations mentioned in article 5 hereof;
 - b Client is adjudicated bankrupt, or an application for its bankruptcy is filed, or applies for or is granted a moratorium;
 - c attachment is levied on Client's assets or part thereof;
 - d Client is declared legally incompetent by judicial decision or is deprived of his liberty;
 - e Client is dissolved or liquidated or, if Client is a natural person, Client dies; f Client ceases or transfers its business or a major part thereof, including
 - f transferring its business to another business;
 - g the information Client provided Heras with turns out not to correspond with the actual situation, and Client has not yet fulfilled all of its obligations towards Heras, Heras may, as a result of the mere occurrence of any of the above-mentioned circumstances and without notice of default or judicial intervention being required, either regard the Agreement as being terminated, or reclaim the delivered goods as its property in the manner provided for in article 8, or demand payment in full from Client of all that Client owes Heras. In addition, Heras may demand compensation from Client.

ARTICLE 13: FORCE MAJEURE

- 1 If Heras cannot reasonably be expected to fulfil one or more obligations due to the occurrence of one or more of the following circumstances, Heras may terminate the Agreement, or part thereof, without judicial intervention, or suspend the performance wholly or in part, without being obliged to pay any compensation. These circumstances include, but they are not limited to, government measures, war, riot, wilful damage, fire, water damage, strikes, excessive absenteeism of staff due to illness, transport problems, restrictions on import and export, defects to machines, interruption of the energy supply, weather conditions, both at Heras itself and at third parties including its suppliers and at third parties whose services it has engaged for the execution of the Agreement, as well as breach of contract on the part of these suppliers and/ or third parties.
- 2 If at the time when a situation of force majeure occurs Heras has already fulfilled part of its agreed obligations, it may invoice the part of the work already performed and the goods already delivered separately and prematurely, and Client shall be bound to pay such invoice as if it were a separate transaction.

ARTICLE 14: THIRD PARTIES

Heras may engage the services of third parties in the execution of the Agreement.

ARTICLE 15: LIABILITY

- 1 Heras's liability towards Client or third parties in respect of any loss, including indirect loss, see paragraph 2, regardless on what grounds, is limited for each event (whereby a series of related events is to be regarded as one event) to the amount that is paid out by Heras's business liability insured in respect of that event.
- 2 Heras shall in no event be liable for any indirect loss on the part of Client or third parties, including consequential loss and loss of profits.
- 3 In the absence of cover under any insurance, Heras's liability shall be limited to the invoiced sum of the order concerned (exclusive of turnover tax).
- 4 The limitations of liability do not apply in so far as the loss concerned is caused as a result of the intent or wilful recklessness on the part of Heras or its senior management.
- 5 Client shall indemnify Heras against third-party claims, regardless of their nature and extent, that are related to work performed for Client by or on behalf of Heras or for goods delivered to Client.
- 6 Client shall indemnify Heras against all third-party claims related to damaged cables/ pipes etc. caused during the performance of the work.
- 7 Furthermore Heras shall not be liable for any loss, including but not limited to consequential loss, due to the malfunctioning of computer(s) and/or software it has supplied, as a result of, but not limited to, any of the following:
 - viruses, ad-ware, etc.;
 - incorrect, improper, and/or inexperienced use;
 - i nstallation and/or use of hardware and/or software other than hardware and/or software supplied by Heras;
 - connection to networks;
 - incorrect or incomplete information provided by the client;
 - use of the software and computer(s) for other purposes than for which they are intended.

ARTICLE 16: ENTERING "PERSONAL DATA"

- 1 "Personal data" means any information relating to an identified or identifiable natural person, in particular by reference to an identifier such as name, identification number, location data or online identifier or of one or more specific elements that are characteristic of the physical, physiological, genetic, mental, economic, cultural or social identity of that person.
- 2 Insofar as Heras and the Client share Personal Data with each other, such Personal Data shall be processed in accordance with all applicable legislation, including the General Data Protection Regulation (Regulation (EU) 2016/679), measures, regulations, decisions and standards that may be amended from time to time.
- 3 The Client shall ensure that all reasonable precautions are taken to guarantee the security of Personal Data and to prevent corruption, loss, damage or destruction thereof. In the event that an unauthorised individual has gained access to the Personal Data of Heras or the Personal Data have been obtained by an unauthorised individual, the Client shall immediately inform Heras of such unauthorised access and shall cooperate with Heras to take all measures deemed necessary to reduce the risk of such loss or unauthorised access.
- 4 If applicable, the Client shall take all such reasonable steps as may be necessary to ensure that its representatives, partners and subcontractors comply with this clause when they process Personal Data as part of this Agreement.

ARTICLE 17: GOVERNING LAW; COMPETENT COURT; CONVERSION

- 1 All agreements and obligations to which these General Terms and Conditions apply shall be exclusively interpreted in accordance with and are governed by Netherlands law. The applicability of the Convention of International Sale of Goods (C.I.S.G.) is excluded.
- 2 If any part of these General Terms and Conditions is nullified or declared null and void, this will not affect the validity of the remaining provisions. The null and void or nullified part will be converted into a valid part that will be to all possible extent be in the spirit of the null and void/ nullified part.
- 3 Any disputes arising from or related to an offer, order, Agreement or obligation to which these Conditions apply, or with respect to these Conditions themselves, will be subjected, in so far as the statutory provisions allow, to the court having subject-matter jurisdiction in the district of 's-Hertogenbosch.

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