



# General terms and conditions of sale Heras BV

## 1. Introduction

- 1.1 These are the general terms and conditions of sale of Heras BV ("Heras"). Heras' contact details are listed below these general terms and conditions of sale.
- 1.2 In these general terms and conditions of sale, the word "customer" means the (legal) person who concludes an agreement with Heras regarding the purchase or rental of goods, the performance of work and/or the supply of services, or who requests information about or expresses an interest in this.

## 2. Applicability of these general terms and conditions of sale

- 2.1 These general terms and conditions of sale apply to all of Heras' offers and to all agreements and other legal relations of Heras with the customer.
- 2.2 These general terms and conditions of sale also apply to follow-up agreements and new agreements with the customer.
- 2.3 These general terms and conditions of sale are attached to every offer and written contract sent by Heras. In addition, they are easily accessible electronically on the website <https://www.heras.nl/over-heras/algemene-voorwaarden/>, where they can be easily saved or printed for later review. Upon request, a copy will be sent to the customer free of charge and without delay.
- 2.4 Terms used by the customer are hereby and in the negotiation process with the customer expressly rejected by Heras and do not form part of the agreement, unless otherwise agreed in writing.
- 2.5 Deviations from the general terms and conditions of sale shall apply only if agreed in writing by an authorised representative of Heras.

## 3. Conclusion of the agreement

- 3.1 All offers and other quotes by Heras are without obligation (in Dutch: vrijblijvend) and remain revokable until immediately (in Dutch: onverwijld) after acceptance.
- 3.2 Offers are based on the information provided to Heras by the customer. Heras cannot be held liable for inaccuracies therein.
- 3.3 The agreement is concluded by acceptance of the offer or agreement by the customer under the condition subsequent (in Dutch: ontbindende voorwaarde) mentioned in the following paragraph. Acceptance may be given by signing the relevant document, sending an order form or giving approval by email. Heras may then confirm the agreement in writing, but it can also immediately start executing the agreement or start making preparations for it.
- 3.4 Every offer is made and every agreement is concluded under the condition subsequent (in Dutch: ontbindende voorwaarde) that the customer passes a credit assessment, which is at Heras' discretion. Heras cannot be held liable for any damages in case it informs the customer that the customer has not passed the credit assessment and that the offer or agreement has therefore lapsed.
- 3.5 If two or more customers enter into an agreement with Heras jointly for the benefit of (one or more of) them, they shall each be jointly and severally liable for the fulfilment of the obligations under the agreement.
- 3.6 Information on the website or in catalogues of Heras, such as pictures and drawings of products, only give a general impression and are not binding.

## 4. Customer/contractor

- 4.1 This article applies to customers who are not the end user of the goods to be supplied, work to be carried out or services to be provided by Heras, such as (main or sub)contractors (the "customer-contractor").
- 4.2 The customer-contractor is obliged to make such written agreements with its own customer for the benefit of Heras so as to protect Heras in the same way or at least to the same extent as described in these general terms and conditions of sale and also to impose the obligation to do the same with its own customers (in chain clause (in Dutch: kettingbeding)).
- 4.3 Upon request, the customer-contractor will allow Heras to review the agreements made with its customer, without disclosing the commercial content of those agreements, so that compliance with the obligation referred to in the previous paragraph can be verified.
- 4.4 The customer-contractor shall indemnify Heras against claims by its customer that exceed Heras' liability to the customer-contractor under these general terms and conditions of sale.

## 5. Change and cancel

- 5.1 After the conclusion of the agreement, it cannot be changed unilaterally, unless the written agreement or these general terms and conditions of sale expressly provide otherwise.
- 5.2 The agreement can also not be cancelled unilaterally, without prejudice to the provisions of these general terms and conditions of sale regarding termination of the agreement.
- 5.3 Requests to amend the contract, such as postponement of the delivery date or start of work, may be sent to Heras in writing, stating the customer's reasons and wishes. Heras is willing to comply with such requests, but it must be practically possible and Heras is expressly not obliged to do so.
- 5.4 Heras may impose conditions for agreeing to a request for change, such as reimbursing costs and paying a new price in accordance with the then current prices.
- 5.5 As a condition for agreeing to a request for postponement of the delivery date or start of work received one week or less before the agreed date, Heras will in any case charge a fixed amount of € 1,000 excluding VAT extra, without prejudice to Heras' right to reimbursement of costs and payment of a new price in accordance with the prices then applicable. In this case, when determining the reimbursement of costs, account shall be taken of the possible inability to use personnel and equipment that were made available on other contracts as a result of the postponement.
- 5.6 As a condition for agreeing to a repeated request for postponement or a request for postponement of more than one month, Heras will charge an additional amount of 20% of the agreed price, without prejudice to Heras' right to reimbursement of costs and payment of a new price in accordance with the prices then applicable.
- 5.7 If the customer declares that it is not prepared to comply with the conditions, as described in the previous paragraphs of this article, or is unsure whether it is prepared to do so, and Heras reasonably expects that the customer will not fulfil the agreement in the agreed manner, Heras shall be entitled to dissolve (in Dutch: ontbinden) the agreement in writing, without the customer having any right to compensation.
- 5.8 In the case described in the preceding paragraph, the customer shall be obliged to pay cancellation costs in the amount of 20% of the agreed price after dissolution by Heras, without prejudice to Heras' right to compensation for damages. This obligation to pay cancellation costs also applies in case Heras agrees to cancellation of the agreement by the customer. The right to compensation shall take into account the possible inability to use personnel and equipment that were made available on other agreements as a result of the dissolution.
- 5.9 The provisions of this article apply regardless of the cause for the customer's request for change or cancellation.

## 6. Prices

- 6.1 All prices are in Euro and exclusive of VAT, transport costs, import and export duties and other taxes, levies and duties, as well as any other additional costs.
- 6.2 Heras shall be entitled to increase prices after the conclusion of the agreement in case of significant or unexpected increases in costs for Heras, including purchase prices of raw materials and other materials, exchange rates, wages and taxes. Heras shall inform the customer as soon as possible about such a price increase, which may take place several times a year. Price increases shall not entitle the customer to terminate (in Dutch: opzeggen) or dissolve (in Dutch: ontbinden) the agreement.
- 6.3 The agreed price refers exclusively to what is described in the offer or written agreement. The costs for additional deliveries and/or works, of whatever nature, shall additionally be borne by the customer. Heras has the right to suspend their execution until the customer has confirmed in writing to pay these costs.
- 6.4 Heras shall not be obliged to honour an agreement at a stated price that is based on an obvious error or is obviously not in line with market prices.

## 7. Payment

- 7.1 The customer shall pay Heras' invoices within 30 days of the invoice date to the bank account specified on the invoice, unless otherwise agreed in writing.
- 7.2 If an invoice from Heras is not paid within the agreed payment period, the customer shall be in default (in Dutch: verzuim) without notice of default and shall owe interest of 1.5% per month on the outstanding amount.
- 7.3 The costs of judicial and extrajudicial collection shall be borne by the customer, with a minimum of 15% of the total outstanding amount including interest. This includes the actual reasonable costs and rates of the collection agency, bailiffs and lawyers to collect the claim.
- 7.4 Suspension of payment by the customer and set-off by the customer are excluded.
- 7.5 Heras is prepared to provide a proforma invoice at the customer's request for a fee of €50 per proforma invoice.

## 8. Obligations of the customer - terms and conditions of contract performance

- 8.1 Heras can only perform the agreement as agreed with the customer if the conditions mentioned in this article are fulfilled. To the exclusion of Heras, the customer is obliged to ensure that all conditions are met in time and to do so at its own expense.
- 8.2 In the event not all conditions are met in due time, the customer shall inform Heras in writing. In that case, Heras shall be entitled to suspend performance of the agreement until all conditions have been met or to dissolve (in Dutch: ontbinden) the agreement in writing if it is not sufficiently confident that all conditions will be met within the foreseeable future. Heras shall also have this right if during the performance of the agreement it appears that not all conditions have been met. Whether or not to partially perform and/or suspend the agreement (including interrupting the work) is at Heras' discretion.

- 8.3 All costs and damages resulting from suspension or dissolution by Heras under the provisions of this article, including the inability to deploy personnel and equipment made available on other contracts, shall be borne by the customer and will be charged. Heras shall be entitled to adjust the price after the suspension to the prices applicable at that time.
- 8.4 Under no circumstances can the customer rely on the fact that an employee or representative of Heras has seen or could have seen the site as it is and that Heras is (thereby) responsible for the fulfillment of certain conditions.
- 8.5 The conditions are as follows:
  - a. the necessary permits and exemptions have been issued to deliver the goods and/or perform work;
  - b. all applicable regulations of (local) authorities to deliver the goods and/or perform work have been met;
  - c. the site is obstacle-free and has ground conditions such that the performance of the work can be carried out according to the standards set by Heras;
  - d. more specifically, the site is free in and above ground from paving, surfacing, rubble, sewers, trenches, very hard clay, rocky substances, old foundations, tree stumps or roots, vegetation, higher groundwater level than 60 cm below ground level and anything else that requires chopping/breaking;
  - e. on the outside of the fence to be erected, a free working space of the fence height + 50 cm and on the inside a free working space of at least 50 cm;
  - f. adequate levelling work has been carried out on areas where fencing is to be mounted level;
  - g. the entire site is accessible so that materials can be unloaded by truck at various points, so that material does not have to be carried over greater distances than 150 metres;
  - h. any cables, pipes, wires, tubes, sewers and similar things have been notified to Heras in writing and in good time - Heras specifically points out that these must be clearly marked on the site with stakes in the correct location; and
  - i. the site or location of performance of the work is provided with gas, water, electricity, heating and facilities prescribed under health and safety legislation and is furthermore generally safely and undisturbedly accessible for the performance of the work by Heras.
- 8.6 With regard to the execution of works, the following conditions shall also apply:
  - a. the land on which the fences and/or gates are to be erected meets the conditions described above at least one week before the start of the work;
  - b. adequate and/or gates will be placed on the line and height marked by the customer before the start of assembly by means of stakes, which may not be removed before delivery and, if there is no marking with stakes, the fences and/or gates will be placed according to the data available;
  - c. an authorised representative of the customer will be present at commencement and at completion, and in the event of absence, the work shall be deemed to have been properly completed; and
  - d. the necessary traffic engineering measures, demarcations, markings, light signals, directions for traffic and pedestrians have been taken.
- 8.7 The following work is not included in the agreed price and will not be carried out without a separate written agreement for an additional fee to be agreed:
  - a. work to help the customer meet the conditions set out in this article;
  - b. replacement of turf and/or broken-out paving (or the broken-out hard materials of any kind) taken out by Heras;
  - c. disposal of excavated soil, other materials or waste;
  - d. supplying, laying and connecting supply or control cables of electrically driven fencing components;
  - e. levelling paving after installation of the stop blocks placed by Heras for gate bolts; and
  - f. work related to compliance with obligations under the Underground Networks Information Exchange Act (Wet informatie-uitwisseling ondergrondse netten) - related costs are also not included in the price.

## 9. Performance of the agreement

- 9.1 Agreed times for delivery or performance shall not count as fatal times (in Dutch: fatale termijnen), unless expressly agreed otherwise in writing.
- 9.2 Agreed times shall not begin to run until the agreement has been concluded, all data necessary for its performance are in Heras' possession and payment, insofar as it is due at the time of conclusion of the agreement, has been made.
- 9.3 Agreed times will be set in the expectation that the circumstances under which the work is to be carried out by Heras will allow unhindered execution, and in particular that the conditions mentioned in the previous article have been met. In case of changes of circumstances, the agreed times will be adjusted, without any right to compensation or dissolution (in Dutch: ontbinding) of the customer. This is the case, inter alia, in the event of additional work and in the event of a change in weather or working conditions, whether or not related to the times or seasons during which the work is to be performed.
- 9.4 In the event of the expiry of an agreed time, Heras shall not be in default (in Dutch: verzuim) until it has received a written notice of default and the reasonable period for compliance set therein by the customer has expired.
- 9.5 Heras is authorised to engage third parties in the performance of the agreement.

## 10. Additional work

- 10.1 All work not initially agreed shall be considered as additional work, including (but not limited to) changes to the work ordered by the customer and provisions found to be necessary to avoid difficulties that were unforeseen for Heras or to resolve problems that have arisen.
- 10.2 Additional work will be charged additionally to the customer. As far as possible, Heras will inform the customer of the additional work in advance, which may be done verbally or in writing. Invoicing of additional work will take place no later than when the additional work has been carried out.
- 10.3 If there is additional work, the delivery time and/or performance time will be extended by the time required to supply (or have supplied) the materials and parts for this purpose and to carry out the additional work.

## 11. Acceptance and delivery

- 11.1 When the work is ready to be delivered, Heras will notify the customer. The customer will then provide an authorised representative within 2 working days to inspect the work with Heras. The work shall be deemed to have been accepted and completed after signing of the delivery form presented at the time of delivery. The customer represents that the person inspecting the work is authorised to accept the work on his behalf.
- 11.2 If the customer does not provide a representative on time or at all, or the designated person is not present at the agreed time, the work is deemed to be accepted and the work is completed. The foregoing does not apply if the customer has requested a new appointment before the agreed time, but a new appointment will only be accepted twice and with an extension of a maximum of 10 working days. If a new appointment is requested a third time or the postponement exceeds 10 working days, the foregoing shall apply and the work shall be deemed to be accepted and the work completed.
- 11.3 If the customer believes that certain things prevent completion, he will report this during the inspection and also confirm it to Heras in writing and with reasons immediately after the inspection. In that case, Heras will have the opportunity to rectify those things within a reasonable period of time.
- 11.4 The work is also considered to be accepted and completed if the work has been put into use or if the customer refuses acceptance on the basis of minor defects or missing parts, which can be repaired or delivered within 30 days and which do not prevent the work from being put into use.

## 12. Duty to complain (complaints)

- 12.1 The customer is obliged to complain in writing to Heras without delay about a defect in Heras' performance or the non-conformity of the delivered goods with the agreement. Without delay in the context of these general terms and conditions of sale means waiting no longer than 5 working days after the defect has been discovered or could reasonably have been discovered.
- 12.2 Quantities delivered as stated on the packing list, waybill, delivery notes or similar documents are deemed to be correct, unless the customer protests immediately after delivery and in any case before processing and/or treatment and this is noted on the delivery note or receipt.
- 12.3 The customer is obliged to check the delivered goods for visible defects immediately upon receipt. A defect immediately visible on delivery must be noted by the customer on the delivery document. Complaints based on visible defects shall lapse if the customer has not reported the defect to Heras in writing within 48 hours of delivery.
- 12.4 Any complaint about an invoice must be made in writing within 7 working days from the invoice date of the relevant invoice, failing which the invoice shall be considered correct and undisputed.
- 12.5 Other complaints, including those relating to defects that were not immediately visible at the time of delivery, must be reported in writing to Heras within 7 working days after the customer has identified the defect, or could reasonably have identified it, accurately stating the nature and grounds for the complaints.
- 12.6 The customer can no longer claim a defect in the performance if its fails to comply with the provisions of this article.
- 12.7 The customer's right to complain shall lapse in any case if the goods delivered by Heras have been taken into use, processed or otherwise (tacitly) accepted.
- 12.8 Slight deviations in size, colour, surface, structure and other minor defects observed cannot constitute grounds for complaints. The customer is aware that changes in colour of a delivered item due to weather influences are possible and therefore do not constitute a justified complaint.

## 13. Warranty

- 13.1 With respect to the goods delivered and/or installed by Heras, Heras guarantees that these will be free of defects resulting from manufacturing and/or material faults for a period of 12 months after delivery and/or completion.

- Warranty on coating differs, depending on location. The conditions and details of the coating guarantee can be found at <https://www.heras.nl/over-heras/algemene-voorwaarden/>.
- 13.2 If Heras has procured items from a third party for the performance of its obligations and that third party applies a shorter guarantee period vis-à-vis Heras than the guarantee period mentioned in the first paragraph of this article, that shorter guarantee period for those specific items shall also apply to the customer vis-à-vis Heras.
- 13.3 In the event of a manufacturing or material defect within the warranty period, Heras will, at its discretion, arrange for repair, replacement or crediting of that part of the invoice to which the warranty claim relates as soon as possible.
- 13.4 Under no circumstances can Heras be held liable for defects in materials or parts prescribed and/or made available by or on behalf of the customer. In this regard, unsuitability for the use for which the prescribed materials and/or parts are intended by the customer shall be considered a defect. Nor can Heras be held liable if the work does not function properly as a result of a defect in a design, construction or working method prescribed by the customer.
- 13.5 Except as described above, Heras shall not be subject to any other repair or replacement obligations. Parts replaced by Heras in the fulfilment of its warranty obligations shall become its property.
- 13.6 The guarantee regarding the performance of work is limited to the fact that Heras will perform the work properly. Heras gives no guarantee with regard to the suitability of the completed work for the purpose intended by the customer.
- 13.7 With respect to the provision of services, Heras shall exercise the care of a good contractor and act as may be expected of a reasonably competent and reasonably acting contractor, but Heras makes no warranty as to any result.
- 13.8 No claim to guarantee or performance of the agreement exists in the following cases:
- when the customer does not follow the operating instructions for the goods, or the delivered product is not used according to its nature;
  - when the maintenance of the delivered goods fails - to which specific maintenance conditions apply, such as for coating the maintenance conditions found at <https://www.heras.nl/over-heras/algemene-voorwaarden/>;
  - when the (delivered) goods are assembled, commissioned and/or maintained or repaired by third parties engaged by the customer or by the customer itself;
  - when changes are made to the work by third parties engaged by the customer or by the customer itself.
- 13.9 No guarantee applies as long as the customer has not fully complied with all its (payment) obligations as against Heras. Afterwards, the guarantee revives retroactively.
- #### 14. Transfer of risk and retention of title
- 14.1 The risk for the goods to be delivered by Heras shall pass to the customer at the moment the goods are delivered to the premises where they are to be delivered or placed. The customer is obliged to ensure adequate security and insurance of the delivered goods.
- 14.2 The sale and delivery of goods takes place under extended retention of title. Ownership of sold and delivered goods, including those already paid for, shall be retained until all Heras' claims arising from agreements with the customer and related services - including interest and costs - have been paid. Until that time, the customer shall be obliged to keep the goods delivered by Heras separate from other items and clearly identified as the property of Heras and to insure them and keep them properly insured.
- 14.3 Heras shall be entitled to claim ownership of and take back the delivered goods if the customer is late with payment or Heras has good reason to fear that the customer will pay late or not at all. The costs of taking back the goods are for the account of the customer.
- 14.4 The customer is prohibited from disposing of, pledging or otherwise encumbering the goods with limited rights, or removing the goods from Heras' recovery, as long as ownership has not yet passed to the customer.
- 14.5 If Heras cannot invoke retention of title because the delivered goods have been mixed (in Dutch: vermengd), deformed or become part of the ground (in Dutch: nagetrokken), the customer shall be obliged to pledge the newly formed goods to Heras or provide other forms of security and to perform the necessary acts to that end.
- 14.6 The customer shall immediately notify Heras of any attachment of its movable and/or immovable property, bankruptcy, suspension of payments and all other circumstances and/or events which may adversely affect the regular performance of the agreement by the customer and/or Heras. The customer shall also immediately inform the receiver, administrator or seizing bailiff of Heras' retention of title.
- 14.7 If the customer violates the obligations arising from this article on transfer of risk and retention of title, the customer shall owe Heras an immediately due and payable penalty of €10,000 for each violation, plus an amount of €1,000 for each day the violation continues, without prejudice to Heras' right to full damages.
- 14.8 If and to the extent that the country of destination of the goods offers more far-reaching possibilities regarding retention of title, those more far-reaching possibilities shall apply.
- #### 15. Use of drawings
- 15.1 The designs, sketches, drawings, descriptions, calculations and similar documents provided by Heras to the customer are intended exclusively for its own use within the framework of and for the purpose of implementing the agreement. Heras retains the intellectual property rights to these documents, even if they incorporate content or ideas of the customer.
- 15.2 The customer shall not provide or show these documents to third parties with a view to obtaining a comparable offer or to obtaining any advantage for itself and/or third parties. The customer also represents that third parties will not use these documents other than for the purposes referred to above.
- 15.3 For these documents, Heras does not accept any responsibility or liability except for intent or gross negligence on the part of Heras or its managing subordinates.
- 15.4 If the customer violates the provisions of this article, the Customer shall forfeit an immediately payable fine to Heras of €5,000 for each violation and €500 for each day that the violation continues, without prejudice to Heras' right to full damages.
- #### 16. Intellectual property rights
- 16.1 All intellectual property rights to (parts of) the goods delivered or otherwise made available by Heras (including any documentation) are vested in Heras and/or its suppliers. Insofar as (parts of) these goods are protected by an intellectual property right or an equivalent right, the customer is granted only the rights of use that are expressly granted in this article.
- 16.2 The customer only has the right to use the relevant (parts of the) goods within its organisation in a manner reasonably customary for such an organisation.
- 16.3 The customer is not allowed to translate, adapt, decompile, deassemble, recreate, modify or (otherwise) reconstruct computer software and circuits that are part of the goods without Heras' prior written consent, unless this is permitted under mandatory law.
- 16.4 The customer is not allowed to remove or change any indications placed on or in the relevant goods concerning intellectual property rights.
- 16.5 Heras declares that, to the best of its knowledge, the goods do not infringe any rights of third parties. If proceedings for infringement of rights are commenced or if the possibility thereto exists, Heras may, at its discretion, inter alia, replace or modify the relevant goods, or acquire the right to continue using them, or take them back in whole or in part subject to repayment of the price paid by the customer to Heras for them withholding a reasonable amount for depreciation.
- 16.6 The customer shall immediately notify Heras in writing of any claim based on the assertion that the use of the goods infringes third-party rights. Heras shall be entitled, but not obliged, in any proceedings based on an alleged infringement, to defend by exclusion or to reach a settlement. Heras shall pay the costs and damages determined in the event of a judgment or settlement at its own expense.
- 16.7 Heras shall not be liable to the customer for infringement of third-party rights if this is connected with the fact that the customer has adapted or modified the relevant goods, or has had these actions carried out by third parties, or has used the relevant goods in conjunction or combination with products not provided by Heras, or has used them in a manner other than stated in the documentation.
- 16.8 If the goods are delivered with third-party documentation restricting the right of use further than stipulated in this article, the relevant documentation shall apply, except for conflict with mandatory law.
- #### 17. Termination of the agreement
- 17.1 The agreement cannot be terminated by the customer. Articles 7:408(1) and 7:764(1) of the Dutch Civil Code do not apply to the agreement between Heras and the customer.
- 17.2 The right to dissolve (in Dutch: ontbinden) the agreement by the customer is also excluded, except in case of a serious breach in the performance of the agreement on the part of Heras. In that case, however, the customer shall first send a written notice of default in which Heras is given a period of at least 30 days to remedy the breach. If the breach cannot be attributed to Heras in the sense of article 6:75 of the Dutch Civil Code, dissolution (in Dutch: ontbinding) is entirely excluded (except in case of force majeure as stipulated in the following article).
- 17.3 If the customer fails - whether or not attributable - to perform the agreement, Heras shall have the right to terminate (in Dutch: opzeggen) the agreement with the customer in writing or to dissolve (in Dutch: ontbinden) it (in full or in part), at its discretion. This right also exists if a request is made to declare the customer bankrupt, suspension of payment is applied for on behalf of the customer, the customer is admitted to statutory debt rescheduling or the customer otherwise loses the power of disposition of (parts of) its assets (whether or not as a result of the imposition of prejudgement or executory attachment).
- 17.4 No default (in Dutch: verzuim) or notice of default shall be required for termination or dissolution by Heras in the cases mentioned in the preceding paragraph. With the termination or dissolution, any claim of Heras against the customer shall be immediately due and payable in full. The customer shall also be liable for all damages suffered by Heras, including loss of profit and transport costs. Heras shall be entitled, without limitation, to set off any debts to the customer, including debts for undoing that arise due to dissolution, against claims against the customer.
- 17.5 Duration agreements with the customer may be terminated by Heras at any time by giving three months' notice in writing.
- #### 18. Force majeure
- 18.1 In addition to the provisions of article 6:75 of the Dutch Civil Code, a breach cannot be attributed to Heras if it is the result of a circumstance independent of its will, including war, threat of war, mobilisation, civil war, terrorism, molestation, riots, an epidemic, pandemic or disease outbreak or aggravation thereof, including related restrictive government measures, organised or unorganised (work) strikes or lock-outs, occupation of premises, fire, flooding or water damage, earthquakes, storm damage, unworkable weather or unworkable ground conditions, inaccessible or inaccessible loading and unloading sites, sailing bans due to high or low water or other sailing restrictions, disruptions in the supply of energy, breakdowns of machinery, illness and/or accident of its personnel, computer failures, (cyber)crime and (cyber)vandalism, business interruptions and reduced production, shortage of raw materials, packaging materials or stock, transport delays, seizure, judicial intervention, import and export restrictions import restrictions or other government-imposed restrictive measures, lack of (local) quality marks for Heras' products, as well as any other impeding circumstance that does not depend exclusively on Heras' will, such as non-delivery or late delivery of goods and services of third parties engaged by Heras.
- 18.2 In such a case, Heras' obligations shall be suspended. Only after the expiry of a period of six months shall Heras and the customer have the power to dissolve (in Dutch: ontbinden) the agreement, but only for the part of the agreement not yet fulfilled.
- 18.3 Suspension and dissolution by Heras shall not lead to any obligation to pay damages, even if Heras enjoys any advantage as a result.
- #### 19. Liability
- 19.1 In the event of an attributable breach in the performance of Heras' obligations or an unlawful act of Heras as against the customer or third parties (an omission included), Heras shall per event or series of events with common cause be liable only for damages of the customer or third parties that are the direct and immediate result of the breach or unlawful act from which the liability arises (direct damages). Heras is therefore not liable inter alia for indirect or consequential damages, such as damages in the form of loss of turnover, loss of profit, business interruption, loss of data or damages and claims of third parties.
- 19.2 The total cumulative liability of Heras per event or series of events with common cause, on whatever legal basis and expressly including an obligation to undo payments received after dissolution (in Dutch: ontbinding) of the agreement, shall furthermore be limited at all times to the amount paid out by its insurer in the case in question. If for whatever reason no payment is made under Heras' insurance, this total cumulative liability of Heras shall be limited to half the invoice value, with a maximum of € 25,000 and twice that amount per year.
- 19.3 Heras is not liable for goods or services provided by third parties on behalf of the customer or for work carried out by third parties on behalf of the customer at or with the goods or services provided by Heras or work carried out by Heras.
- 19.4 No liability whatsoever exists for damage in connection with incorrect functioning of delivered hardware and software due to viruses, ad-ware, etc., or as a result of incorrect, careless or incompetent use, installation or use of hardware or software other than that delivered by Heras, connection to networks, incorrect or incomplete data provided by the customer, or use for purposes other than those for which the hardware and software are intended.
- 19.5 Heras shall not be in default (in Dutch: verzuim) until it has been given written notice of default, has been given the opportunity to perform its obligations within a reasonable period and has allowed this period to lapse unused.
- 19.6 Heras shall be entitled to have the damages alleged by the customer assessed by an expert to be appointed by it. The customer is obliged to cooperate fully with an investigation into the nature, extent and cause of the damages, under penalty of forfeiting the right to compensation.
- 19.7 Claims for payment of damages shall only become due and payable after Heras' insurer has paid out. Any claim for compensation shall lapse 3 months after the day on which the customer became aware or could reasonably have become aware of the damages and of Heras as the (potentially) liable party for it.
- 19.8 The above exclusions and limitations of liability shall not apply if the ground of liability is related to intent or deliberate recklessness (in Dutch: bewuste roekeloosheid) of Heras or its managerial subordinates.
- 19.9 The customer indemnifies Heras against all claims by third parties, of whatever nature and extent, relating to work carried out by or on behalf of Heras for the customer, or goods delivered to the customer. The customer therefore indemnifies Heras, inter alia, against claims by third parties in connection with damage to cables and pipelines caused during the performance of the work.
- #### 20. Applicable law and competent court
- 20.1 The legal relationship between Heras and the customer shall be governed exclusively by Dutch law. Applicability of the Vienna Sales Convention is excluded.
- 20.2 All disputes between Heras and the customer shall be exclusively submitted to the judgment of the competent court in 's-Hertogenbosch, on the understanding that Heras shall at all times be entitled to submit the dispute to the competent court in the jurisdiction where the customer is located.
- #### 21. Other provisions
- 21.1 These general terms and conditions of sale are drawn up in languages other than the Dutch language. In case of contradictions, the Dutch text shall prevail.
- 21.2 The customer may not transfer its legal relationship with Heras and its rights and obligations under the agreement to third parties without Heras' prior written consent. This provision has property law effect as referred to in article 3:83(2) of the Dutch Civil Code.
- 21.3 Heras is authorised to transfer the legal relationship with the customer by means of contract takeover to an affiliated company or as part of an acquisition of its business and the customer cooperates in advance.
- 21.4 These general terms and conditions of sale shall also apply for the benefit of Heras group companies and legal persons, auxiliary persons and subordinates that Heras uses (directly or indirectly) in the performance of the agreement, including the provision for limitation of liability.
- 21.5 If any provision of the agreement or these general terms and conditions of sale is or becomes wholly or partly non-binding, the other provisions shall remain in full force. The non-binding provision shall in that case be deemed to have been replaced by a provision that is binding and deviates as little as possible from the content and scope of this provision.
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