



**Algemene verkoop- en leveringsvoorwaarden Van Dijk Heavy Equipment B.V.**



**The general terms and conditions of payment and delivery of Van Dijk Heavy Equipment B.V.**



**Conditions générales de livraison et de paiement de Van Dijk Heavy Equipment B.V.**



**Allgemeine Geschäftsbedingungen Van Dijk Heavy Equipment B.V.**

These general terms and conditions of payment and delivery have been filed with the Chamber of Commerce in Eindhoven on February the 27<sup>th</sup> 2009 under number 17078066.

#### **I. General**

1. These general terms and conditions of sale and delivery apply to all offers and agreements of purchase/sale of goods by Van Dijk Heavy Equipment B.V. ("VDHE"), established in Deurne, unless provided otherwise in the offer or agreement.
2. Supplementary or varying provisions or conditions shall apply only if agreed in writing; these supplementations and departures shall apply only to the agreement in respect of which they have been made.
3. The rights and obligations arising between VDHE and the buyer under the agreements may not be transferred by the buyer to third parties without the prior written consent of VDHE.
4. The general terms and conditions of the Buyer are hereby explicitly excluded.

#### **II. Offers**

Any offers/quotations by VDHE are strictly without engagement, unless otherwise agreed in writing. An offer with a deadline for acceptance may nevertheless be withdrawn by VDHE, even after receipt of the order, provided this is done within five days of receipt of such order.

#### **III. Agreements**

An agreement shall not be deemed to have been validly concluded until VDHE has confirmed the order in writing or has commenced with the implementation of the order. The content of the agreement is determined by VDHE's offer, as well as by the provisions in these general terms and conditions of payment and delivery.

#### **IV. Amendments**

1. Amendments and stipulations to these general terms and conditions of sale and delivery and/or the contract of sale with the buyer shall apply only in so far as agreed in writing between the buyer and VDHE.
2. If the changes lead to an increase in the costs, VDHE is authorised to pass on any resultant change in the purchase price to the buyer.

#### **V. Prices**

1. All quotations and prices charged by VDHE are the prices excluding VAT and other levies and taxes relating to the contract applying at the time the agreement was concluded, unless expressly agreed otherwise.
2. If a change takes place in one of the price-determining factors after the offer has been issued, VDHE is authorised to adjust the prices correspondingly, even if the contract has since been concluded.
3. Price changes in excess of 10% provide the buyer with the right to dissolve the agreement, provided this is done in writing and within seven days of receipt of the relevant notification by VDHE. Such a dissolution does not provide the buyer with any entitlement to compensation for any loss whatsoever.

#### **VI. Payment**

1. The buyer is obliged to settle all invoices before delivery of the goods in question, unless agreed otherwise in writing, in accordance with paragraphs 2 and 3 of this clause.
2. The buyer is obliged to pay the purchase price within the period stated on the invoice. The buyer is not authorised to set off the purchase price or to suspend payment on account of any counterclaim.
3. The payment term shown on the invoice is a firm date. If invoices are not paid within the payment term, the buyer shall be in default without requirement for any written notice of default, irrespective as to whether the non-compliance can be attributed to the buyer.
4. Without prejudice to its other rights, VDHE is authorised to claim interest on the outstanding amount at 1.5% per month, calculated from the due date in question.
5. All legal and extrajudicial costs incurred by VDHE in relation to a dispute with the buyer, both as plaintiff and defendant, shall be for the buyer's account. The extrajudicial collection costs shall amount to at least fifteen percent of the principal.
6. Payments by the buyer shall be assigned to the oldest outstanding items, including interest and costs, even if the buyer declares differently.
7. The buyer shall have no right to reclaim down-payments.
8. In the event of late payment any adverse exchange difference shall be for the buyer's account. The reference dates shall be the due date on the invoice and the date of payment.
9. Payments shall be made in euros, unless otherwise agreed in writing.
10. A buyer making use of its rights to place goods in storage within the meaning of clause XVI remains obliged to pay the purchase price in the manner stated in paragraph 1 of this clause.

#### **VII. Delivery date, delivery, risk**

1. The delivery period named or agreed in the offer and/or order confirmation may in no circumstances be regarded as a firm date, even if expressly accepted by the buyer. Late delivery by VDHE shall accordingly not count as breach of contract until after written notice of default has been served.
2. The specified/agreed delivery period shall at any event, but not exclusively, be automatically extended by the period(s) during which:
  - arrival and/or dispatch its delayed and/or there are any other circumstances temporarily preventing implementation, irrespective as to whether this may be attributed to VDHE;
  - the buyer fails to discharge one or more of its obligations vis-à-vis VDHE or there are well-grounded fears that it will fail to do so;
  - the buyer does not enable VDHE to implement the agreement; this situation arises for example if the buyer fails to advise the place of delivery or to make available the details, equipment or facilities required for implementation.
3. Equally, the buyer may not refuse to receive or pay for the goods and/or demand compensation for direct or consequential loss or for costs incurred by him or by third parties in the event that the agreed delivery period is exceeded.
4. Delivery shall be made in the country where the goods are located at the point of delivery. Delivery shall be deemed to have taken place at the point at which the goods have been placed at the buyer's disposal by VDHE. Unless otherwise agreed delivery shall be made "ex Voltstraat 19, Deurne".
5. All goods are transported and loaded at the buyer's cost and risk, even if the consignment is sent carriage paid.
6. If VDHE arranges consignment of the goods at the buyer's request, the time, method of consignment and consignment route shall be at VDHE's choice.
7. Transport insurance will only be taken out by VDHE at the express request of the buyer; all the associated costs will be for the buyer's account.
8. If VDHE has provided any equipment for the transportation or arranged for this to be done by a third-party, where appropriate after payment of a deposit, the buyer shall be obliged to return the equipment to the address specified by VDHE, in the absence of which the buyer will be liable to pay VDHE compensation.
9. Any equipment within the meaning of the previous paragraph must be returned in the condition in which it was received before transportation. VDHE is authorised to have the equipment inspected by an expert after use. The buyer is obliged to pay compensation for any damage to the equipment provided to it.
10. Premature and/or partial deliveries are permitted; in this regard the buyer is obliged to settle the invoice in question as though it concerned a separate transaction.

#### **VIII. Exchange/Guarantee**

1. The goods delivered by VDHE will comply with the specifications as laid down in the relevant contract of sale.
2. Purchased goods may not be exchanged or returned.
3. VDHE does not provide any guarantee for goods that have been sold and delivered.
4. The buyer accepts the good in the condition it was in at the time of inspection.

#### **IX. Inspection**

The buyer has the right to inspect the goods before delivery at a place and time determined by VDHE. The costs of such inspection shall be for the buyer's account.

#### **X. Non-compliance/dissolution/suspension**

1. VDHE is authorised to dissolve the contract with immediate effect, without legal intervention, in full or in part, or to suspend its implementation, without prejudice to its other rights to compliance and/or compensation, in the following instances:
  - the buyer acts at variance with any provision in the agreement between the parties;
  - the buyer seeks a (temporary) postponement of payment or files for bankruptcy;
  - bankruptcy proceedings are instituted against the buyer;
  - the buyer's business is shut down or liquidated;
  - a private composition is offered.
2. Any claim on the buyer in the instances referred to in paragraph 1 shall be immediately due and payable, without VDHE being obliged to pay compensation.
3. The provisions of clause X (1) shall apply mutatis mutandis if the buyer, having been invited in writing to do so, fails within seven days to provide security regarded by VDHE as adequate.
4. If the buyer remains in default for more than fourteen days as regards payment and/or acceptance VDHE shall be authorised without further notification to resell the goods sold, in which case the down payment made to VDHE shall lapse in compensation for the loss incurred by it, unless the buyer is able to produce evidence showing that the loss was lower.

#### **XI. Retention of title**

1. Delivery is made subject to retention of title. This reservation applies to claims in respect of payment for all goods delivered or to be delivered by VDHE to the buyer and/or to activities performed or to be performed in respect of the delivery, as well as in respect of claims on account of failure to perform on the part of the buyer, on whatever grounds.

2. In the instances referred to in clause X, VDHE is authorised to repossess the delivered goods that have remained its property in accordance with paragraph 1. Such repossession shall qualify as dissolution of the agreement(s) concluded with the buyer.
3. In so far as necessary for its normal business operations, the buyer is authorised to make use of the goods that are subject to retention of title. If the buyer makes use of this right, it will be obliged to make delivery to third parties of the goods subject to similar retention of title by VDHE. The buyer is also required to provide VDHE at first request with an undisclosed pledge on the claims that it has or will obtain on those third parties. Should the buyer refuse to do so, this provision shall constitute irrevocable authority on the part of VDHE to institute such an undisclosed pledge.
4. The buyer is not authorised to sell the goods subject to the retention of title other than part of its normal business operations, to pledge them or in any way whatever to infringe VDHE's retention of title by the establishment of a restricted real right.

**XII. Right of retention**

VDHE is authorised to suspend the performance of the obligation to surrender the property of the buyer that is in its possession in connection with any order, until the claim by VDHE in relation to such property has been paid in full including interest and costs.

**XIII. Trade-ins**

If the buyer continues to use a traded-in product in anticipation of delivery of the product purchased by it, any costs in relation to the aforementioned product and any reduction in value shall be for its account.

**XIV. Liability**

1. VDHE is not liable for any loss due to any failure to comply with its obligation(s) vis-à-vis the buyer. Any claim for compensation is expressly excluded, except in the case of wilful intent or gross negligence on the part of VDHE or supervisory subordinates.
2. Equally, VDHE is not liable for the loss arising from wilful intent or negligence/gross negligence of supervisory/non-supervisory subordinates or of others engaged by it for the purposes of implementing the agreement.
3. VDHE is not liable for incorrect kilometre readings/years of construction/time readings and/or other incorrect specifications of the products.
4. VDHE does not accept any liability for any advice submitted by it or on its behalf.
5. If the exclusions/limitations of liability in the preceding paragraphs should fail to stand up in court for whatever reason, VDHE's liability for non-compliance or non-timely or inadequate compliance shall in no circumstances exceed the net sales amount or net invoice amount of the goods in question.

**XV. Force majeure**

1. In the event of force majeure VDHE is authorised to dissolve the contract in full or in part, or alternatively to suspend the implementation thereof, without any liability to pay compensation.
2. By force majeure in the sense of these general conditions of sale and delivery is understood any circumstance outside the will and beyond the doing of VDHE that may or may not have been foreseeable at the time of the conclusion of the agreement, as a result of which compliance could not be reasonably demanded of VDHE, such as war, governmental measures, lack of raw materials, factory stoppages or traffic disruptions, as well as transport difficulties of whatever nature, work stoppages, lock-out or lack of personnel, quarantine, epidemics, time lost through frost, failures on the part of third parties engaged by VDHE for the implementation of the agreement and any other circumstances seriously complicating compliance with the agreement.
3. If VDHE has already partially discharged its obligations upon commencement of the force majeure, it shall have the right to charge separately for goods already delivered and the buyer shall be bound to settle the invoice in question as though this concerned a separate agreement.

**XVI. Storage**

1. If for whatever reason the buyer is not in a position to take receipt of the goods at the agreed time and the goods are ready for delivery, VDHE will, storage facilities permitting, store and secure the goods at the buyer's request until they are delivered to the buyer.
2. The buyer is obliged to reimburse VDHE for the costs of storage according to VDHE's customary rate from the time at which the goods are ready for delivery or, if later, from the delivery date agreed in the contract of sale.
3. Storage shall take place solely at the risk of the owner of the product.

**XVII. Partial nullity**

If one or more provisions in these general terms and conditions of payment and delivery and/or the contract of sale with the buyer proves invalid, the remaining provisions shall continue in full force and effect. The invalid provisions will be replaced by an appropriate regulation approximating the intention of the parties and the economic result being aimed at by them as closely as possible in a legally effective manner.

**XVIII. Applicable law**

These general terms and conditions of sale and delivery and/or the contract of sale with the buyer are subject to Dutch law. The applicability of the Vienna Sales Convention is explicitly excluded.

**XIX. Disputes**

1. Any disputes arising under these general terms and conditions of sale and delivery and/or the contract of sale with the buyer this agreement or other agreements in implementation hereof will be resolved exclusively by the competent Dutch court in 's-Hertogenbosch.
2. A dispute shall be deemed to exist as soon as one of the parties so declares.