

## **HORREX HORREN B.V. GENERAL TERMS AND CONDITIONS**

*These General Terms and Conditions are also available in Dutch. In case of contradiction between this English version and the Dutch version, the text of the Dutch version shall prevail.*

*The Dutch version of these general Terms and Conditions has been filed with the Chamber of Commerce of Rotterdam.*

### **Article 1. Definitions**

1. Unless indicated otherwise in these General terms and Conditions, the used terminology has the following meaning:  
User: Horrex Horren B.V. (Vlaardingen, the Netherlands) is the user of these General Terms and Conditions.  
Buyer: The opposing party, acting in pursuance of his/her profession or business, to whom User is selling, supplying or providing services.  
Agreement: The Agreement between User and Buyer.

### **Article 2. Applicability**

- 2.1. These Terms and Conditions are applicable to any and all legal relationships between User and Buyer, including every offer and agreement between User and Buyer declared subject to these Terms and Conditions, unless parties explicitly stated otherwise (by means of written communication).
- 2.2. These Terms also apply to all agreements with User, in which third parties execute.
- 2.3. Any clauses deviating from these Terms and Conditions shall only be valid, in the presence of an explicit written agreement.
- 2.4. The applicability of purchasing or other conditions of the Buyer and/or third parties will be expressly rejected
- 2.5. In the event that any provision/article of these present General Terms and Conditions and/ or the agreement between parties, to which these General Terms and conditions apply is null and void or is nullified, the other provisions/articles of these General Terms and Conditions and/ or this agreement shall remain in full force. User and Buyer shall agree new provisions to replace the null and void or nullified provisions; both the purpose and the meaning of original provision will be observed to the greatest extent possible

### **Article 3. Offers and realization of an agreement**

- 3.1. Each offer made by User is non-committal, unless the offer contains an explicit term (time limit) of acceptance.
- 3.2. Unless expressly stated otherwise, the prices and tariffs offered by user shall be in EURO and exclusive of value-added tax (VAT), other government levies and possible costs like transportation & administrative costs.
- 3.3. If the Buyer supplies the user with data, User may rely on their accuracy and shall base the offer exclusively on that information.
- 3.4. The agreement between User and Buyer will be established at the moment when
  - a) The offer made by User is expressly verbally or by written notice (in full force) accepted by Buyer.
  - b) User has received a signed order confirmation.
  - c) User has commenced activities in carrying out an order on request by Buyer.Each of the parties has the right to prove that the agreement has been established at another moment or by other means.

### **Article 4. Execution of the agreement**

- 4.1. User shall execute the agreement with the greatest and responsible care. However User can't answer for reaching a specific result in case of wrong services.
- 4.2. Weights, measures and other specifications as mentioned in offers, on drawings etc. are approximate only, unless they are expressly stipulated to be binding.
- 4.3. User reserves the right (after accepting the agreement) to make modifications in drawings, weights and measures, materials and accessories. This will be done, when User has taken the view that this action will lead to an improvement of the quality and/or functionality of the merchandise. User is not obliged to inform Buyer in advance.
- 4.4. Delivery times stated by User shall always be approximate and shall never constitute firm deadlines. There shall be no entitlement to compensation in case of exceeding the delivery time. Buyer can not terminate the agreement when delivery time is exceeded, unless this exceeding was caused intentionally or gross negligence on the part of User.
- 4.5. If delivery is not in time Buyer must supply a (written) notice of default to User, before User can be accused of culpable shortcoming.

- 4.6. If necessary in order to fulfill the requirements of the agreement, User reserves the right to make third parties execute some work.
- 4.7. Buyer will be responsible for timely providing all data, asked for by User and all data, which Buyer should, in fairness recognize being significant for the execution of the agreement. In the event that information which is necessary for the execution of the agreement has not or not timely been made available for User, User shall have the right to postpone the execution of the agreement, whereas User shall also have the right to charge any costs incurred as a result thereof in accordance with its usual tariffs.
- 4.8. User retains the copyrights and industrial property rights to all provided information like designs, drawings, descriptions, specifications, prototypes, models and calculations of costs. Buyer must return all aforementioned information on demand. The information may not be copied, used or shown to third parties.

#### **Article 5. Delivery**

- 5.1. Unless otherwise agreed delivery will be made ex-works (EXW).
- 5.2. Buyer shall be obliged to take possession of the goods at the moment the goods are delivered, or at the agreed moment of having disposal of the goods.
- 5.3. In the event that Buyer refuses purchase of goods or in the event of Buyer failing to provide information or instruction, necessary for delivery, User is entitled to store goods for the Buyer's account and risk.
- 5.4. The risks attached to the goods are transferred at the moment goods are delivered legally and/or actually to Buyer, thereby being at Buyer's disposal and in the power of Buyer (or a third party appointed by Buyer).

#### **Article 6. Price and expenses**

- 6.1. Price is exclusive of value-added tax (VAT) and any expenses made within the scope of the agreement.
- 6.2. User may charge any increase in costs-determining factors that arise from for example alteration or supplementation of the agreement.
- 6.3. User shall also be entitled to increase the price when significant price changes have occurred between the time of offer and delivery with respect to wages or other costs.

#### **Article 7. Payment**

- 7.1. Payment must be made within 14 days from date of invoice date and in compliance with the payment mode stated by User, in the currency mentioned in the invoice. Unless expressly stated otherwise no deduction, discount or settlement is allowed. Any objection to the amount of the invoice does not postpone payment obligations.
- 7.2. In the event Buyer fails to pay the amounts due within 14 days, Buyer will be legally in default. In that event the legal interest rate shall be payable by Buyer. Interest will be charged as from the expiration date of the invoice until the total amount has been paid. ( a part of one month will count as one full month).
- 7.3. If Buyer is wound up, involuntarily liquidated or granted a moratorium, Users claims shall become immediately due and payable.
- 7.4. User may use the payments made by Buyer in first instance to settle all costs, subsequently to settle all interest amounts and finally to settle the sum total and the current interest. User may refuse an offer to pay, if Buyer states to pay in any order other then mentioned above.(In this case User is not in default.).User may refuse full payment, if this redemption does not include owed and current interest and costs.
- 7.5. If Buyer does not fulfill his payment obligations in time, User may , at its option, elect to withhold future deliveries of goods to Buyer until such breach has been cured. User may also require payment in advance ( or C.O.D.) as to future deliveries.
- 7.6. Buyer is obliged to ensure that it is and remains creditworthy during the duration of the agreement. User is entitled at any time to investigate or have investigated the Buyer's creditworthiness. If the results of such an investigation give reason to this, and in the opinion of user, it can reasonably be expected that the Buyer will not be able to observe its obligations subject to the agreement, User is entitled to require that the Buyer provides (additional) security and / or pays upfront and / or pays cash on delivery and / or User can amend its tariffs / prices and / or suspend its performance. User will inform the Buyer of any such measure.

#### **Article 8. Retention of Ownership**

- 8.1. After delivery, User remains the owner of the goods until Buyer has totally fulfilled all obligations from all agreements. User will adjudge this total fulfillment.

- 8.2. Buyer is not entitled to pawn/hypothecate any goods, subject to Retention of Ownership; nor is he entitled to encumber it in any other way.
- 8.3. If third parties attach delivered items that are subject to the Retention of Ownership, or wish to create rights on or enforce rights to these, Buyer must inform User as soon as reasonably be expected.
- 8.4. Buyer must insure delivered items subject to Retention of Ownership against fire, explosion and water damage and theft. The risk policy must be open to inspection on first demand.
- 8.5. Delivered goods as defined in 8.1 may only be resold in the scope of Buyers ordinary activities. In this case Buyer is obliged to resell also under retention of Ownership. It is prohibited to use delivered goods as defined in 8.1 as instrument of payment.
- 8.6. In case User claims his right of Retention of Ownership Buyer grants, as early as at this moment, unconditional and irrevocable authority to User (or to third parties indicated by User) to enter the location where abovementioned goods are stored and to repossess these goods.

#### **Article 9. Collecting agents costs**

- 9.1. Buyer shall pay all reasonable compensation of any extra judicial costs and if applicable, judicial costs in connection with the collection of debt, in the event Buyer fails to pay the amounts due within the agreed period of time.
- 9.2. Buyer shall pay the legal interest for costs in connection with the collection of debts.

#### **Article 10. Inspection, notice and Guarantee**

- 10.1. Claims with respect to the goods shall be provided with written notice within eight ( 8 ) days from date of delivery, or otherwise ultimately ( 8 ) days after the defect should, within reason, have been detected. The letter of complaint must contain a detailed report of the complaint/defect, so user can react adequately.
- 10.2. In case the complaint is well founded, user is entitled to either adapt the invoice amount, either to deliver the mentioned product once again, either to refund part of the paid sum without executing the agreement to a further extent.
- 10.3. In case Buyer has not complained within the time limited stated in article 10.1 all Buyer's rights and claims, concerning Buyer's complaint shall be expired.
- 10.4. User guarantees the proper performance of delivered goods and assembly for 12 months, unless the supplier of Users goods uses another term for the goods concerned. We explicitly mention that the gauze used in our products is excluded from this guarantee.

#### **Article 11. Repair**

- 11.1. Buyer bears the responsibility that User's personnel or third parties indicated by User can execute agreed assembly activities at the agreed moment. Buyer shall also take care (timely and free of charge for:
  - a) a dry, lockable and illuminated storage space for tools and materials
  - b) necessary and customary auxiliary instruments, light, water and electricity.-
  - c) a proper accommodation for abovementioned assembly personnel.
- 11.2. In case the agreed assembly or repair has been delayed by circumstances that cannot be attributed to User, User reserves the right to charge Buyer for costs caused by this delay.

#### **Article 12. Expirationterm**

- 12.1. With the stipulations in article 10 remaining in full force, Buyer shall, unless already happened on the basis of 10.1, instantaneously provide an User written notice in case of experienced shortcoming by User. Furthermore claims to damages become described if no proceedings are instituted within 12 months of this written notice.

#### **Article 13. Postponement and Termination**

- 13.1. User has the right to postpone any obligations towards Buyer or to dissolve the agreement, without any notice of default or juridical intervention, in the next circumstances:
  - a) Buyer does not meet the commitments in time or adequately
  - b) Buyer has been declared bankrupt or has been filed petition in bankruptcy.
  - c) Buyer has got suspension of payment or has applied for a moratorium.
  - d) Buyer has been placed under legal restraint.In abovementioned circumstances the rights of User remain in full force, including entitlement to compensation.

**Article 14. Liability**

- 14.1. User shall accept legal obligations to pay damages insofar as this may come apparent from this article 14.
- 14.2. User's total liability, shall be limited to the payment up to the amount of the price agreed for the agreement.
- 14.3. User shall not be liable for damages, caused by Buyer's non compliance to article 3.3 (obligation to provide information), unless these damages are partly due to gross negligence or willful intent by User.
- 14.4. User shall not be liable for damages, caused by actions or refrain from actions by third parties involved in executing the agreement on behalf of Buyer. This shall be unless these damages are partly due to gross negligence or willful intent by User.
- 14.5. User reserves constantly the right to restrict, reduce or to rectify Buyer's damage. Buyer shall be cooperative in this procedure..
- 14.6. Buyer is obliged to restrict, reduce or to rectify Buyer's damage as much as possible.
- 14.7. User's liability for indirect damages, including consequential damage, third party damage, lost income, lost cost-savings and damage due to standstill shall at any time be excluded, unless in case of gross negligence or willful intent by User.
- 14.8. The liability for user compensation under any legal basis is also limited to the damage for which User is insured on his or her behalf for the purpose of his insurance, and never exceeds the amount paid in this case by this insurance.
- 14.9. If, for whatever reason, the liability insurer does not pay out then User's liability shall be limited to a maximum of the (invoice) amount charged by the user to the buyer for the goods delivered and / or for carrying out the work in which the cause of the damage is located.

**Article 15. Indemnification**

- 15.1. Buyer indemnifies User against claims from third parties, with regard to an infringement on intellectual property rights on materials or data provided by Buyer, used for executing the agreement.
- 15.2. Buyer indemnifies User for claims from third parties arising from or leading back to the execution of the agreement in case User is not legally liable towards Buyer in pursuance of article 13.

**Article 16. Force Majeure**

- 16.1. None of the parties shall be under the obligation to fulfill any obligation in the event of Force Majeure.
- 16.2. For purposes of these General Terms and Conditions, Force Majeure shall mean, in addition to it's meaning in legally term and in jurisprudence, all external causes, foreseeable and unforeseeable, beyond the sphere of influence of User, that disables User from meet User's commitments, this also includes strikes and sit-down strikes in User's company.
- 16.3. In case of Force Majeure, Buyer shall not be entitled to compensation.
- 16.4. When Force Majeure leads to exceeding of a (delivery) period, Buyer shall have the right to terminate the agreement concerned by registered mail. This termination shall not include goods already delivered; these delivered goods shall be paid User, taking into account article 6.

**Article 17. Applicable law and disputes**

- 17.1. Only the Dutch civil court within whose jurisdiction User's place of business is situated is competent to pass judgment on disputes., unless such is at odds with any mandatory rules of law.
- 17.2. These General Terms and Conditions are governed by the laws of the Netherlands. We explicitly state that The Vienna Sales Convention (C.I.S.G.) does not apply to these General Terms and Conditions.

**Article 18. Location**

- 18.1. The Dutch version of these General Terms and Conditions has been filed with the Chamber of Commerce of Rotterdam, Southwest region.
- 18.2. The latest filed version General Terms and Conditions shall apply, casu quo the version applying in the time of the establishment of the agreement.