

# GENERAL DELIVERY AND PAYMENT TERMS AND CONDITIONS

of the Hokofarm Group, deposited at the Chamber of Commerce for  
Gooi, Eem and Flevoland under number 39030449, July 2009

## Article 1: Applicability

- 1.1. The articles 2 up to and including 20 of these general terms and conditions are applicable to all offers made by companies belonging to the Hokofarm Group, to all agreements they conclude and to all agreements resulting there from. If the offers or the concluded agreements (also) comprise maintenance and/or service the articles 21 up to and including 26 shall also be applicable.
- 1.2. The company belonging to the Hokofarm Group is referred to as the contractor. The counterparty is referred to as the customer.

## GENERAL PART

### Article 2: Offers

- 2.1. All offers are without engagement.
- 2.2. If the customer supplies data, drawings, etc. to the contractor, the contractor can assume the correctness thereof and shall found its offer on the same.
- 2.3. The prices specified in the offer are based on a delivery "ex works" in conformity with the Incoterms 2000. The prices are excluding VAT and packaging.
- 2.4. If its offer is not accepted the contractor shall be entitled to charge all costs it had to incur to make its offer to the customer.

### Article 3: Intellectual property rights

- 3.1. Unless otherwise agreed upon in writing, the contractor reserves the copyrights and all other industrial property rights on the offers made and designs, images, drawings, (test) models, software, etc. supplied by the same.
- 3.2. The rights on the data specified in paragraph 1 shall remain the property of the contractor irrespective of the fact as to whether costs were charged to the customer for the manufacture thereof. These data cannot be copied, used or disclosed to third parties without the express prior approval in writing of the contractor. Per violation of this provision the customer shall forfeit a fine of € 25,000.00 to the contractor. This fine can be claimed in addition to the statutory compensation for damages.
- 3.3. The customer determines and is responsible for the scope and the efficiency of the activities to be carried out. The customer decides on the (technical) specifications on the basis of which the activities are ultimately carried out.
- 3.4. On demand the customer must return the data supplied to the same as intended in paragraph 1 within the deadline imposed by the contractor. In case of violation of this provision the customer shall forfeit a fine of € 1,000.00 per day to the contractor. This fine can be claimed in addition to the statutory compensation for damages.

### Article 4: Advices, designs and materials

- 4.1. The customer cannot derive any rights from advices and information received from the contractor if the same are not directly related to the commission.
- 4.2. The customer is responsible for the drawings, calculations, designs made by or on behalf of the same and for the functional suitability of the materials prescribed by or on behalf of the same.
- 4.3. The customer indemnifies the contractor against any claim of third parties with regard to the use of drawings, calculations, designs, materials, samples, models and the like supplied by or on behalf of the customer.
- 4.4. Prior to the processing thereof the customer can at its own expense examine (have examined) the materials the contractor intends to use. If the contractor consequently incurs damages these shall be borne by the customer.

### Article 5: Delivery time

- 5.1. The delivery time and/or implementation period is determined approximately by the contractor.
- 5.2. Upon the determination of the delivery time and/or implementation period the contractor shall assume that it can carry out the commission under the circumstances currently known to the same.
- 5.3. The delivery time and/or implementation period only commences if agreement has been reached on all commercial and technical details, all required data, definitive, approved drawings etc. are in the possession of the contractor, the stipulated payment (instalment) has been received and the required terms and conditions for the implementation of the commission are complied with.
- 5.4. a. In case of different circumstances than those known to the contractor at the time it determined the delivery time and/or implementation period, the contractor can extend the delivery time and/or implementation period by the time required to carry out the commission under these circumstances. If the activities cannot be included in the planning of the contractor the activities shall be carried out as soon as its planning permits the same.  
b. In case of additional activities the delivery time and/or implementation period is extended by the time required to deliver (have delivered) the materials and parts for this and to carry out the additional activities. If the additional activities cannot be included in the planning of the contractor the activities shall be carried out as soon as its planning permits the same.  
c. In case of suspension of obligations by the contractor the delivery time and/or implementation period is extended by the duration of the suspension. If continuation of the activities cannot be included in the planning of the contractor the activities shall be carried out as soon as its planning permits the same.  
d. In case of unworkable weather the delivery time and/or implementation period is extended by the thus incurred delay.
- 5.5. Overstepping of the stipulated delivery time and/or implementation period shall in no instance whatsoever entitle to compensation for damages, unless this has been agreed upon in writing.

### Article 6: Transfer of risk

- 6.1. Delivery takes place "ex works" in conformity with the Incoterms 2000; the risk of the good transfers at the moment the contractor renders the same available to the customer.
- 6.2. Notwithstanding the provisions in the previous paragraph the customer and the contractor can stipulate that the contractor provides for the transport. The risk of storage, loading, transport and unloading is in that case also borne by the customer. The customer can conclude an insurance against these risks.
- 6.3. In case of a trade-in where the customer continues the use of the good to be traded in pending the delivery of the new good, the risk with regard to the good to be traded in shall be borne by the customer up to the moment the same renders this good available to the contractor.

### Article 7: Price change

- 7.1. An increase of cost-determining factors occurring after the conclusion of the agreement can be charged to the customer by the contractor if the performance of the agreement has not been completed at the time of the increase yet.
- 7.2. The customer is held to pay the price increase as intended in paragraph 1 simultaneously with the payment of the principal amount or the first following instalment.

### Article 8: Force majeure

- 8.1. The contractor is entitled to suspend the fulfilment of its obligations if the same is, due to circumstances that could not have been anticipated at the conclusion of the agreement and that are beyond its direct sphere of influence, temporarily prevented from complying with its obligations.
- 8.2. Circumstances that could not have been anticipated by the contractor and that are beyond its direct sphere of influence are, among other things, understood as the circumstance that suppliers and/or sub-contractors of the contractor do not or untimely comply with their obligations, the weather, earthquakes, fires, loss or theft of tools, the loss of materials to be processed, roadblocks, strikes or work interruptions, import or trade restrictions and animal diseases (e.g. foot and mouth disease and swine fever).
- 8.3. The contractor is no longer entitled to suspension if the temporary impossibility of fulfilment has lasted for more than six months. Only after expiry of this deadline can the agreement be dissolved for that part of the obligations that has not been fulfilled yet. In that case the parties shall not be entitled to compensation for the damages incurred or to be incurred as a result of the dissolution.

### Article 9: Scope of the work

- 9.1. The customer must ensure that all permits, exemptions and other decrees required to carry out the activities in a timely manner have been obtained.
- 9.2. The price of the activities does not include:
  - a. the costs for earthworks, driving, hacking, breaking, foundation, masonry, carpentry, plastering, painting, repair or other architectural activities and earthing of the supplied installation(s);
  - b. the costs for the connection of gas, water, electricity or other infrastructural facilities;
  - c. the costs to prevent or reduce damage to goods available at or during the activities;
  - d. the costs for the disposal of materials, building materials or waste;
  - e. travel and sojourn expenses;
  - f. the costs for the movement of the activities and/or product to the place of destination.

### Article 10: Changes in the activities

- 10.1. Changes in the activities shall in any case result in more or less work if:
  - a. there is question of a change in the design or the specifications;
  - b. the information supplied by the customer is not in accordance with the reality.
- 10.2. More work is calculated on the basis of the value of the price-determining factors that are applicable at the time the additional activities are carried out.  
Less work is settled on the basis of the value of the price-determining factors that were applicable at the time of the conclusion of the agreement.
- 10.3. If the balance of less work exceeds that of more work, the contractor can charge 10% of the difference of these balances to the customer with the final settlement. This provision shall not apply to less work resulting from a request of the contractor.

### Article 11: Execution of the work

- 11.1. The customer ensures that the contractor can carry out its activities in an undisturbed manner and at the stipulated time and that during the performance of its activities it shall dispose of the required facilities such to include yet not limited to:
  - gas, water and electricity;
  - heating;
  - lockable dry storage room;
  - facilities prescribed pursuant to the Dutch Working Conditions Act and regulations.
- 11.2. The customer is liable for all damages, among other things resulting from loss, theft, fire or damage, to goods of the contractor, the customer and/or third parties, like tools and materials meant for the work, present at the location where the activities are carried out or at another stipulated location.
- 11.3. If the customer does not comply with its obligations on account of the previous paragraphs and a delay in the execution of the activities is consequently incurred, the activities shall be carried out as soon as the customer yet complies with its obligations and the planning of the contractor permits this. The customer is liable for all damages on the part of the contractor caused by the delay.

### Article 12: Delivery of the work

- 12.1. The work is deemed delivered when:
  - a. the customer approved the work;
  - b. the work has been commissioned by the customer. If the customer commissions a part of the work then this part is deemed delivered;
  - c. the contractor communicated to the customer in writing that the work is complete and the customer did not communicate in writing within 14 days after this communication as to whether the work is approved or not;
  - d. the customer does not approve the work on the basis of minor defects or missing parts that can be repaired or delivered within 30 days and that do not prevent commissioning of the work.
- 12.2. If the customer does not approve the work the customer shall be obliged to communicate this to the contractor in writing stating the reasons thereto.
- 12.3. If the customer does not approve the work then the customer shall provide the contractor with the opportunity to again deliver the work. The provisions of this article are in that case equally applicable.
- 12.4. The customer indemnifies the contractor against claims of third parties with regard to damages to not delivered parts of the work caused by the use of the already delivered parts of the work.

### Article 13: Liability

- 13.1. The contractor is liable for damages incurred by the customer and directly and exclusively resulting from a shortcoming that can be blamed on the contractor. However, only damages against which the contractor is insured, or should within reason have been insured, qualify for compensation.
- 13.2. The following does not qualify for compensation:
  - a. trading losses such to for example include stagnation damages and lost profit. If so desired the customer can conclude an insurance against these damages;
  - b. damages to livestock;
  - c. supervision damages. Supervision damages are understood as, among other things, damages inflicted on goods on which work is carried out or to goods located in the vicinity of the location where work is carried out by or during the performance of the activities. If so desired the customer is to conclude an insurance against these damages;
  - d. damages caused by intent or gross negligence of helpers or non-managerial subordinates of the contractor.
- 13.3. The contractor shall not be liable for damages to material supplied by or on behalf of the customer resulting from an improper processing. At the request of the customer the contractor shall again perform the processing with new material supplied by the customer at its sole expense.
- 13.4. The customer indemnifies the contractor against all claims of third parties on account of product liability as a result of a defect of a product which has been delivered to a third party by the customer and which (also) consisted of products and/or materials supplied by the contractor.

### Article 14: Warranty

- 14.1. The contractor guarantees the proper execution of the stipulated performance for a period of six months after delivery.
- 14.2. If the stipulated performance consists of the contracting of work then the contractor shall guarantee the soundness of the delivered construction and the material used for the period specified in paragraph 1, provided the contractor was free in the choice thereof.  
If it becomes apparent that the delivered construction and/or the material used was not sound, the contractor shall either repair or replace this. The parts that must be repaired at the contractor or replaced by the contractor must be sent to the contractor carriage paid. Disassembly and assembly of these parts and the possibly incurred travel and sojourn expenses are borne by the customer.

- 14.3. If the stipulated performance (also) consists of the processing of material supplied by the customer then the contractor shall guarantee the soundness of the performed processing during the period specified in paragraph 1.  
If it becomes apparent that a processing was not carried out soundly, the contractor shall at its sole discretion:
- again perform the processing. In that case the customer must at its own expense supply new material;
  - remedy the shortcoming. In that case the customer must return the material to the contractor carriage paid;
  - credit the customer a proportionate part of the invoice.
- 14.4. If the stipulated performance consists of a good then the contractor shall guarantee the soundness of the delivered good during the period specified in paragraph 1.  
If it becomes apparent that the delivery was unsound, the good must be returned to the contractor carriage paid. Then the contractor shall at its sole discretion:
- repair the good;
  - replace the good;
  - credit the customer for a proportionate part of the invoice.
- 14.5. If the stipulated performance (also) consists of the installation and/or assembly of a delivered good then the contractor shall guarantee the soundness of the installation and/or assembly during the period specified in paragraph 1.  
If it becomes apparent that the installation and/or assembly was not carried out soundly the contractor shall remedy this. The possibly incurred travel and sojourn expenses are borne by the customer.
- 14.6. With regard to those parts in respect of which the customer and the contractor have expressly agreed upon this in writing the manufacturer's warranty shall apply. If the customer has the opportunity to take note of the content of the manufacturer's warranty then the latter shall replace the warranty in pursuance of this article.
- 14.7. The customer must at all times provide the contractor with the opportunity to remedy a possible defect and/or to again carry out a processing.
- 14.8. The customer can only invoke the warranty after the same has complied with all its obligations vis-à-vis the contractor.
- 14.9. The customer is held to abide by the returned goods procedures (RGP) as currently applicable at the contractor, failing which the contractor shall not handle a complaint.
- 14.10. a. A warranty is not provided if defects are the result of:
- normal wear and tear;
  - injudicious use;
  - not or incorrectly performed maintenance;
  - installation, assembly, change or repair by the customer or by third parties.
- b. A warranty is not provided on delivered goods which were not new at the time of delivery or goods which were prescribed by the customer or delivered by or on behalf of the same.
- c. A warranty is not provided on the inspection and/or repair of goods of the customer.

#### Article 15: Complaints

The customer can no longer invoke a defect in the performance if the same did not submit a written complaint to the contractor within fourteen days after the same discovered the defect or should within reason have discovered the defect.

#### Article 16: Goods not taken delivery of

If after the expiry of the delivery time goods have not been taken delivery of, these shall remain at the disposal of the customer. Goods not taken delivery of shall be stored at the expense and risk of the customer. The customer can always make use of the authority in pursuance of article 6:90 of the Dutch Civil Code.

#### Article 17: Payment

- 17.1. Payment is effectuated at the location of the establishment of the contractor or to an account thereto designed by the contractor.
- 17.2. Unless otherwise agreed upon in writing payment shall take place:
- a. in cash in case of a desk sale;
  - b. in case of instalments:
    - 20% of the total price upon award;
    - 80% of the total price prior to delivery;
  - c. in all other instances within thirty days after the date of the invoice.
- 17.3. Notwithstanding the stipulated payment terms and conditions at the request of the contractor the customer shall be obliged to provide sufficient payment security at the discretion of the former. If the customer does not comply with this within the imposed deadline, the same shall be in default. In that case the contractor shall be entitled to dissolve the agreement and recover the costs from the customer.
- 17.4. The right of the customer to settle its claims vis-à-vis the contractor is excluded except in case of the bankruptcy of the contractor or if judicial suspension of payment is applicable to the contractor.
- 17.5. The complete payment claim shall immediately be claimable if:
- a. a payment term is exceeded;
  - b. the customer is declared bankrupt or files for suspension of payment;
  - c. an attachment is imposed on the goods or claims of the customer;
  - d. the customer (company) is dissolved or liquidated;
  - e. the customer (natural person) files a petition for admission to judicial debt restructuring, is placed under guardianship or dies.
- 17.6. If payment did not take place within the stipulated payment term the customer shall immediately be held to pay interest to the contractor. The interest amounts to 12% per year yet equals the legal interest if the latter would be higher. For the purposes of the interest calculation a part of a month is considered as a full month.
- 17.7. If payment did not take place within the stipulated payment term the customer shall be held to pay the contractor all extrajudicial costs with a minimum of € 75,00.  
The costs are calculated on the basis of the following table:
- |                                     |     |
|-------------------------------------|-----|
| over the first € 3,000.00           | 15% |
| over the excess up to € 6,000.00    | 10% |
| over the excess up to € 15,000.00   | 8%  |
| over the excess up to € 60,000.00   | 5%  |
| over the excess as from € 60,000.00 | 3%  |
- If the actually incurred extrajudicial expenses are higher than follows from the calculation above, the actually incurred costs shall be due.
- 17.8. If the contractor is put in the right in legal proceedings all costs incurred by the same in connection with these proceedings shall be borne by the customer.

#### Article 18: Reservation of title and right of pledge

- a. After delivery the contractor shall remain the owner of the delivered goods as long as the customer:
  - fails or shall fail the fulfilment of its obligations on account of this agreement or on account of similar agreements;
  - is not paying or shall not pay for performed or yet to be performed activities on account of these kinds of agreements;
  - did not pay claims deriving from the noncompliance with the aforementioned agreements, like damages, fines, interests and costs.
- b. As long as a reservation of title is vested on delivered goods the customer cannot encumber these beyond its normal operation.
- c. Once the contractor has invoked its reservation of title the contractor can take back the delivered goods. The customer shall allow the contractor to enter the location where these goods are located.
- d. If the contractor cannot invoke the reservation of title as the delivered goods have been mixed or deformed or became a constituent element the customer shall be obliged to pledge the newly formed goods to the contractor.

#### Article 19: Termination

If the customer intends to dissolve the agreement without there being question of a shortcoming on the part of the contractor and the contractor concurs with the same, the agreement shall be terminated with mutual consent. In that case the contractor shall be entitled to compensation for all financial losses like incurred losses, lost profit and incurred costs, equal to an amount of at least 25% of the total price.

#### Article 20: Applicable law and competent court

- 20.1. Dutch law is applicable.
- 20.2. The Vienna Sales Convention (C.I.S.G.) is not applicable nor are any other international regulations from which exclusion is possible.
- 20.3. Only the Dutch civil court competent in the place of domicile of the contractor can take cognisance of disputes unless this is in violation of imperative rules of law. The contractor can deviate from this rule governing jurisdiction and apply the statutory rules governing jurisdiction.

### SPECIFIC PROVISIONS FOR MAINTENANCE / SERVICE

#### Article 21: Obligations of the contractor

- 21.1 All activities to be carried out on the object shall be performed by expert personnel.
- 21.2 After the performance of the maintenance / service activities the contractor shall provide the customer with a document containing the findings of the service engineer of the contractor and possible recommendations and/or proposals concerning yet to be performed repairs.

#### Article 22: Obligations of the customer

- 22.1 The customer is held to at its own expense and risk have simple cleaning and maintenance activities carried out on the object like the regular cleaning of filters, the replacement of printer cartridges / printer ink ribbons and the replacement of parts subject to wear and tear.
- 22.2 The customer must grant the contractor and/or its personnel, if so desired upon presentation of (business) identification, access to the object for the performance of the tasks deriving from this agreement.
- 22.3 The customer must render the object available to the contractor for the benefit of the activities deriving from this agreement in a clean condition and such at a location suitable for these activities.
- 22.4 For the purposes of the delivery of the activities the customer must sign the document as intended in article 21 paragraph 2.

#### Article 23: Preventive maintenance

- 23.1 Preventive maintenance is understood as one or more control inspections during a specific period set forth in the maintenance agreement and according to a frequency specified in this agreement. During this control inspection(s) parts that qualify and affect the reliable functioning of the object are checked, calibrated or replaced.
- 23.2 Within the framework of the stipulated preventive maintenance the contractor shall in any case not be held to perform the following activities free of charge:
  - the performance of repairs;
  - the delivery and/or replacement of parts such to include but not limited to oils and filters;
  - the troubleshooting on the object at times other than those designated for periodical maintenance.
- 23.3 Preventive maintenance shall only be carried out by the contractor during normal office hours as applicable at the customer. Before the activities are carried out the parties shall need to agree on a date and time when the contractor shall perform the activities.
- 23.4 If during the preventive maintenance the contractor observes that a part must be replaced as a result of a circumstance set forth in article 25 repair shall take place under the troubleshooting conditions mentioned below.

#### Article 24: Duration

- 24.1 Total loss or total destruction of the installation shall immediately terminate the maintenance agreement. If only a part of the objects to be maintained by the contractors has been destroyed the maintenance agreement shall continue to the extent that regards the maintenance of the existing objects.
- 24.2 The installation is also deemed to have totally been destroyed if the repair costs, decreased by the residual value, exceed the current market value of the installation immediately prior to the occurrence of the damage.
- 24.3 If the cause of the loss or the destruction as set forth in the two preceding paragraphs can be blamed on the customer then the contractor shall be entitled to charge the damages incurred as a result of the early termination of the maintenance agreement to the customer.

#### Article 25: Troubleshooting

The contractor shall after a breakdown notification carry out maintenance and/or repair activities at the request of the customer ("troubleshooting"). This is understood to include all maintenance and service instances that do not fall under the preventive maintenance.

#### Article 26: Price

- 26.1 The contractor shall not charge call-out charges and hours of labour in connection with the activities specified in article 23.
- 26.2 The costs associated with troubleshooting shall be charged separately in accordance with the fees applicable to the relevant services and activities at the contractor. The costs of parts that have been replaced or must be replaced within the framework of these activities (breakdown and/or maintenance) shall also be charged to the customer.
- 26.3 Waiting times of the customer are in any case charged to the customer if the contractor cannot immediately after arrival commence the activities due to actions of the customer.
- 26.4 Other activities to which this agreement does not extend shall, if commissioned by the customer, be carried out by the contractor under the usual terms and conditions applicable within the company of the contractor.