

GENERAL TERMS AND CONDITIONS OF HATEK B.V., HAVING ITS SEAT IN WATERINGEN

Filed at the Chamber of Commerce and Factories for Delft and Surroundings under number 00827

General stipulations

Article 1 General

1. These terms and conditions are applicable to each offer, designated offer and agreement between Hatek B.V., hereinafter: Hatek and a counterparty to which Hatek has declared these terms and conditions applicable insofar from these terms and conditions shall not be deviated by parties explicitly and in writing.
2. The present terms and conditions are also applicable to agreements with Hatek, for the execution of which by Hatek third parties must be involved.
3. The applicability of the general terms and conditions possibly applied by counterparty is hereby explicitly excluded by Hatek.
4. If one or more stipulations in these General Terms and Conditions on any moment in whole or in part are invalid or will be invalidated, then the other stipulations of these General Terms and Conditions remain fully applicable.

Article 2 Designated offers and offers

1. All designated offers and offers of Hatek are valid during 30 days after the date of the designated offer or offer, but will be issued entirely non-binding, unless explicitly agreed otherwise in writing.
2. The images, drawings, schedules and descriptions etc. provided by Hatek with the designated offer or offer apply only for clarification.
3. If the counterparty reasonably can understand that in the designated offer or offers there is an obvious mistake or typo, then Hatek cannot be held to its designated offer or offer.
4. Upon written confirmation of an order by Hatek, the content of the confirmation of commission applies as the content of the agreement.
5. Documentation, processing related and other advices, coaching and inspection will be provided to the best of knowledge and abilities, respectively executed, however - unless explicitly agreed otherwise - non-binding and outside responsibility of Hatek.
6. Data in print works, provided by Hatek are subject to changes without notification in advance. They do not bind Hatek.
7. The prices stated in the designated offer and offer are net in cash without discount and exclusive of VAT.
8. Offers from stock take place each time as long as the stock lasts.
9. Unless explicitly agreed otherwise, offers are exclusive of provision of services (for instance regarding assembly or installation).

Article 3 Agreements

1. All agreements and all other transactions, concluded under whichever name, will be concluded by written confirmation, or by giving execution to the granted commission/order by Hatek.
2. If agreements and additions thereto have been confirmed in writing by Hatek, then Hatek is bound to these insofar and in the manner, such as confirmed by it. The counterparty that grants a commission to Hatek, remains bound to his commission, until this is refused by Hatek.

Article 4 Delivery times and place of delivery

1. Delivery takes place ex work place, factory, warehouse or shop, at the choice of Hatek, unless agreed otherwise in writing.
2. Stated delivery times shall never be regarded as a fatal term, unless explicitly agreed otherwise. Hatek must therefore in case of non-timely delivery be declared in default in writing. Hatek must thereby be given a reasonable term to be able to give execution to the agreement after all. Hatek is never liable (also not after notification of default) for compensation of damage as a consequence of exceeding of the agreed delivery time, unless this has been stipulated by a written agreement.
3. When the goods after the expiry of the delivery term, have not been taken-off by the counterparty, then the goods are at his disposal, stored for his account and risk.

Article 5 Force Majeure

1. If Hatek will be hindered by Force Majeure from delivery, it is not required to the compliance with any obligation towards counterparty. Hatek has the right to suspend during the duration of the Force Majeure all or some obligations from the agreement or to dissolve the agreement insofar not yet executed, without being required to compensation of any damage to the counterparty.
2. Under Force Majeure will among others be understood all involuntary disruptions or impediments because of which the execution of the agreement becomes more costly or more cumbersome, war or danger of war, mobilisation, uprising, state of siege, work strike or exclusion, fire, accident or illness of personnel, both in Factories of which Hatek sources material, as in the own warehouse, enterprise disruptions, delay in the supply, breach to machines or tools, reduction of the production and shortage of fuels, lawful stipulations or other stipulations by the government and other unforeseen circumstances as well as each circumstance, whichever, because of which it is for Hatek reasonably speaking impossible to comply in a normal manner.

Article 6 Assembly in hourly wages or contracted works

1. Assembly will be executed against the normal applicable rates. The personnel charged with the assembly limits itself to the assembly of the material delivered by Hatek and/or the material that was included in the commission. For assembly work falling outside the commission, Hatek is not liable.
2. The counterparty must arrange for carrier assistance, greasing and polishing agents and required heating and lighting during the execution of the assembly.
3. Reparation to existing old material, protections of holes, hatches, belts etc., derives, unless otherwise agreed, not from obligations to delivery, work-ready final delivery or assembly.
4. When the assembly, by causes outside the fault of Hatek, cannot take place regularly and without interruption or will be delayed in another manner, then Hatek shall bring the costs deriving there from into account to counterparty against the normal rate.
5. In deviation of the stipulations in article 14 with regard to the term for reclamation, reclamation after departure of the assembly personnel concerning the execution of the works or the duration thereof, will not be treated. All possible extra costs and so in particular costs, emerged because the assembly cannot take place in the ordinary hours of the day, shall be for the account of the counterparty. After the assembly has been rounded off and the goods are put into operation by the personnel of Hatek, the assembly will be deemed to have been completed.

Article 7 Payment conditions

1. Payment must take place before or no later than on the due date stated on the invoice.
2. All payments must take place net in cash, without discount or claim on any set-off, unless agreed otherwise in writing and insofar the law does not prescribe otherwise.

3. Hatek is authorised to request before the delivery, before continuing with the delivery or the compliance of the commission, request surety sufficient in its opinion for the compliance with payment obligations of the counterparty. These stipulations also apply if credit has been stipulated. Hatek may also suspend the deliveries if the counterparty has remained in default in the compliance of his (payment) obligations, also if a fixed delivery time is agreed. Refusal of the counterparty to provide the requested surety, gives Hatek the right, to regard the agreement as dissolved, notwithstanding its rights to compensation of expenses and loss of profit.

4. The claim to payment of the entire purchase/lease price is in each case immediately payable upon demand in case of not-strict payment of an agreed term on the due date, when the counterparty enters in a state of bankruptcy, files for suspension of payment or him being put under supervisorship has been filed for, if any attachment on the goods or claims of counterparty will be put and if he dies, enters in liquidation or will be dissolved.

Article 8 Consequences of the payment default

1. If counterparty remains in default with timely payment of an invoice, then counterparty is in default by law. The counterparty is, without that for this any prior summation or notification of default shall be required, liable to pay an interest of 1% per month, whereby parts of a month will be counted as an entire month, over each amount of the invoice that is not paid on the due date.

2. Hatek may claim of the counterparty all in-court and out-of-court costs, that will be caused by the not-timely payment of the counterparty. Out-of-court costs are in each case liable to pay by the counterparty if Hatek has assured itself for the collection of the help of a third party. The out-of-court costs are 15% of the principal sum with a minimum of €75.00. If Hatek applies for the bankruptcy of counterparty, then this is, in addition to the purchase sum/lease monies, the interest and the related out-of-court costs, also liable to pay the costs of application for bankruptcy.

Article 9 Liability

1. If Hatek should be liable, then this liability is limited to what is regulated in these stipulations in that regard.
2. Hatek is not liable for damage or whichever nature, which has emerged because Hatek has relied on incorrect and/or incomplete data provided by counterparty.
3. Hatek is never liable for indirect damage, unless the law stipulates otherwise mandatorily. Under indirect damage will be understood among others, consequential damage, enterprise damage, missed profit, missed savings and damage by enterprise stagnation.
4. Hatek is never liable for damage emerged by defects to the executed works or assembled and/or delivered/leased installations and goods. Neither is it liable for damage, which will be caused by or during the execution of the works, or the assembly of the delivered/leased installations or to goods to the plot, the vehicle or the ship where these treatments take place, or the goods located therein. Hatek is neither liable for the damage at the execution of the works or the assembly of the delivered/leased goods, caused by errors or omissions of third parties, nor for the damage, caused by chemical influences or induction of already present materials or materials used by third parties.
5. Hatek is not liable for damage, that by or during the execution of the works or the assembly of delivered/leased installations and goods in plots, ships or vehicles of counterparty or third parties or in the open air will be caused to goods, on which is worked, or to goods, which are located in the vicinity of the place, where is worked.
6. The counterparty is liable for all damage as a consequence of loss, theft, fire or damaging of the goods, tools and materials of Hatek, as soon as these are located on the works, the one and the other insofar not imputable to the personal gross fault or negligence of Hatek.
7. Counterparty commits itself to safeguard Hatek from each claim of third parties to compensation of damages towards Hatek regarding the delivery/lease and/or assembly and regarding the use of sent drawings, samples, models or model plate, on the basis of whichever cause and is liable for all costs deriving there from.
8. Should Hatek be liable, then this liability is limited to a maximum of twice the value of the invoice of the agreement, at least of that part of the agreement to which the liability relates.
9. The liability of Hatek is in each case limited to the amount that will be paid out by its insurance.
10. In all instances, in which Hatek makes a claim on the above stipulations, then its employee(s) possibly held liable, can also make a claim thereon, this as if the stipulations were also made for the benefit of the concerned employee(s).

Article 10 Disputes

1. Solely the Laws of the Netherlands are applicable to all agreements concluded under these terms and conditions. The applicability of the Vienna Purchase treaty is excluded.
2. The court in the city of the seat of business of Hatek is authorised to take knowledge of all disputes that derive from offers and deliveries, as well as from agreements of execution of works, of purchase and sale, or of lease, unless the law prescribes mandatorily otherwise. Nevertheless, Hatek has the right to present the dispute to the court competent per the law.

Article 11 Delivery and transport

1. The delivery will be deemed to have taken place:
 - a. if the goods will be collected by or on behalf of the counterparty by the taking into receipt of the goods;
 - b. in case of shipment by intervention of a professional goods transporter by the transfer of the goods to the transporter;
 - c. in case of shipment by a means of transport of Hatek by the delivery to the house or to the warehouse of the counterparty.
2. All goods travel for the account and risk of the counterparty.
3. Hatek has complied with its obligation to deliver, by offering the goods once to the counterparty, the report of the transporter, containing the refusal of acceptance, serving as full proof of offer to delivery, in which case the return freight, the storage costs and other costs come for the account of the counterparty.

Article 12 Price increase

1. Agreed prices are based on the price basis of materials, transport costs, wages, insurance premiums, fiscal burdens, import duties and further price determining factors, applicable on the day of conclusion of the agreement.
2. If for the delivery any increase of price determining factors as aforementioned, emerges - also if it takes place as a consequence of foreseen or foreseeable circumstances at the conclusion of the agreement - then Hatek has the right to, at its discretion, either bring a proportional increase into account to the counterparty, or to dissolve the agreement insofar that it is not executed. The payment of a possible extra price on the basis of this article shall take place at the same time as that of the principal sum, respectively the last term thereof.

Article 13 Retention of title

1. Until all claims, that Hatek has or shall obtain on counterparty, on whichever basis, have been fully paid, the delivered goods remain for the account and risk of the counterparty and either processed, or unprocessed, remain the sole property of Hatek.
2. The counterparty is not authorised to put a lien on these goods or to encumber them in another manner, or to transfer in property. In case the counterparty does not comply with any obligation from an agreement with regard to sold goods towards Hatek, then it is without any notification of default, authorised to take back the goods.
3. In case Hatek makes a claim on the retention of title then the agreement(s) will be also dissolved without intervention by the courts, notwithstanding the right of Hatek to claiming of compensation of damage, missed profit and interest.
4. The counterparty is obliged to notify Hatek immediately in writing of the fact, that third parties claim rights on goods, on which on the basis of this article retention of title rests. Should it prove at any time, that counterparty has not complied with these obligations, then he is liable to pay a fine of 10% of the unpaid part of the purchase sum to Hatek.

Article 14 Reclamation

1. Reclamation concerning the measure, the weight, quantity and/or outward visible defects must take place by registered mail within 8 days after receipt of the goods.
2. Reclamation concerning the not outward visible defects must be made in writing by registered mail within 8 days after discovery of the defect, at least after the defect in reasonableness could have been discovered by the counterparty, but in no case later than 21 days after receipt of the goods.
3. If the counterparty does not comply with these terms, then he has forfeited his rights towards Hatek because of alleged improper delivery.
4. All return shipments must take place free to the address of shipment. Hatek is authorised to refuse unpaid shipments.
5. When a written, timely submitted reclamation will be considered well-founded, then Hatek is only required to repair the concerned goods delivered or repaired by it free of charge, or to replace it by another, such solely at the discretion of Hatek.
6. Reclamations do not suspend the payment obligation(s) of the counterparty.

Article 15 Cancellation agreement

1. The counterparty waives, insofar that is not in violation of mandatory lawful stipulations all rights to dissolution of the agreement, unless dissolution will be agreed in accordance with the stipulations under point 2.
2. Dissolution by counterparty is only possible with permission of Hatek. If Hatek grants this permission, then counterparty is liable to pay a compensation of 15% of the purchase sum to Hatek, unless the made costs and loss of profit exceed the amount established in this manner, in which case a higher percentage must be paid. In case of dissolution, counterparty can make no claim on what already has been performed by Hatek.

Article 16 Warranty

1. Goods or parts thereof delivered by Hatek, purchased by it from a third party, are subject to no other warranty than that which Hatek has stipulated from the concerned manufacturer/supplier for this.
2. Hatek offers the same warranty as the manufacturer/supplier, if and insofar the manufacturer/supplier is voluntarily willing to compensate Hatek, what Hatek claims as a consequence of the warranty stipulations of the manufacturer/supplier. If the manufacturer/supplier offers no warranty, then also no warranty will be given by Hatek.
3. Disassembly or assembly will not be for the account of Hatek.
4. Defects emerged by normal wear and tear, inexpert or incorrect treatment/maintenance (none or not sufficient lubrication, lubrication with improper material), or those which occur after changes or repairs applied by or on behalf of the counterparty himself or by third parties, remain outside the warranty.
5. The warranty applies only if the counterparty has complied with all of his obligations towards Hatek (both financially and otherwise).
6. By Hatek no warranty will be given for machineries, instruments, tools or installations, which have been repaired/assembled by Hatek, but have not been delivered by it.
7. The warranty goes in no case further than to the delivery free of charge of new parts.
8. Hatek has the authority (solely at its discretion) to replace the delivered in its entirety, or to take this back in certain instances instead of delivery of new parts.
9. Unless agreed otherwise in writing, no warranty will be given for machineries, instruments, tools, installations, aids or other kinds of delivered articles, which (in principle) were not new on the moment of delivery.

Article 17 Not collected repair goods

1. When goods repaired by Hatek will not be accepted by a counterparty, after he has been given notification of the repair, within one month under simultaneous payment of the invoice concerning this repair, then Hatek has the right to let those goods be sold in public, under the obligation to pay out the proceeds thereof, after deduction of the amount belonging to it concerning the repair bill and storage fee, to the counterparty.

Additional stipulations concerning the lease

Article 18 Lease period

1. The lease agreement will be concluded for an undefined time, unless explicitly agreed otherwise.
2. The lease period starts on the day, that the leased with all parts necessary for the putting into operation has been put on transport to counterparty, or if it is agreed that the counterparty shall come to collect the leased, on the day which is agreed for this.
3. The lease period ends on the day, on which the leased, with all parts necessary for the putting into operation has arrived on the storage place of Hatek, or on a place designated by it and has been accepted by Hatek.

Article 19 Lease price

1. The lease price will be calculated per day. Irrespective of the actual duration of the lease agreement, the counterparty is at least liable to pay to Hatek the lease price over five working days. The establishment of lease price is based on five working days, or 40 operational hours per week.
2. If the leased is equipped with an hours' counter, shall upon exceeding of the number of 40 operational hours per week the lease price be increased per extra hour with 1/8 of the standard lease price per day, such to a maximum of twice the standard lease price per day. The counterparty is obliged to notify Hatek immediately in writing if the hours' counter does not, or not properly function, in the absence of which counterparty is liable to pay to Hatek twice the standard lease price per day. If the leased is not equipped with an hours' counter, then upon partial use, 1.6 X the standard lease price per day will be calculated and upon continuous use, twice the standard lease price per day. The counterparty is obliged to inform Hatek, whether he uses the leased partially or continuously.
3. Unless agreed otherwise in writing shall not be included in the lease price:
 - a. the costs of transport, those of transport insurance therein included;
 - b. the costs of installation of the leased;
 - c. the costs of repairs to be executed by or on behalf of Hatek;

d. the costs of supervision on the leased to be held by or on behalf of Hatek;

e. the prices of by fuels, operation materials and so forth to be made available by Hatek to counterparty;

f. VAT.

These costs shall be brought into account separately by Hatek apart to counterparty.

Article 20 Deposit

1. Hatek reserves the right to require at all times, therefore also after the conclusion of the lease agreement, of counterparty, for the correct compliance with his obligations from the lease agreement, payment of a deposit, which deposit shall be settled after termination of the lease agreement and after the leased has been delivered back by counterparty to Hatek and is accepted by the latter. Hatek is not required to any compensation of interest over this deposit. Counterparty shall not be authorised to bring the deposit into reduction of any payment due by him to Hatek.

Article 21 Obligations counterparty

1. If the counterparty has not received the leased in a good state, then he is obliged to report such within 24 hours after receipt per registered mail to Hatek, in the absence of which he will be assumed to have received the leased in a good state.
 2. The counterparty is obliged to keep the leased in the state, in which he has received it, and to use it in accordance with the destination.
 3. The counterparty is required to strictly comply with the instructions, provided to him, verbally or in writing, by or on behalf of Hatek with regard to the use of the leased.
 4. The counterparty is obliged to give back the leased after expiry of the lease period again in a good state, complete and equipped with all accessories to Hatek, with an accompanying packing list in duplicate. If the counterparty does not return the leased, parts thereof or accessories delivered along, to Hatek, then he is required to immediately compensate to Hatek, the value of newprice of the not returned delivered lease product or a part thereof or the accessories thereof.
 5. The counterparty is forbidden to, without prior written permission of Hatek, introduce or let introduce changes to the leased.
 6. The counterparty is forbidden, without prior written permission by Hatek, to make the leased available to third parties, to give it in use or to sub-lease it.
- If aforementioned permission is granted by Hatek, then counterparty is required to point the third party thereon, and the applicability of these terms and conditions of lease can also be called upon towards him. The counterparty remains however, at all times liable and responsible towards Hatek for the compliance with this lease agreement.
7. The counterparty is forbidden, except for prior written permission of Hatek, to bring the leased outside the Netherlands or "offshore".
 8. The counterparty is obliged to conclude with regard to the leased such an object insurance, that in case of damage, gone missing or destruction of the leased, the value as new is insured, to be increased with possible loss of lease.
 9. Upon first request of Hatek, counterparty is obliged to inform Hatek where the leased is located.

Article 22 Liability

1. Notwithstanding what is stipulated in article 9, all risk of the leased is for counterparty from the moment that the leased is delivered by Hatek to the counterparty, until the moment that the leased returned to Hatek is returned and is accepted by the latter.
2. The loading and unloading of the leased takes place, irrespective of whether the leased is brought or collected by Hatek, at all times for the risk of the counterparty. If the transport from or to the place where the leased will be used by counterparty, is commissioned to a third party, such takes place, irrespective of by who the commission to the transport was given, entirely for the risk of the counterparty.
3. Hatek shall in no case be required to compensation of damage to persons and/or goods, that derive directly and/or indirectly from visible or invisible, hidden or not-hidden defects to the leased, the impropriety of the material, incorrect repairs or otherwise, possible enterprise damage, the damage by standstill, wages, compensation of damages of whichever nature included, such except for wilful intent or gross fault from the side of Hatek.
4. The counterparty is towards Hatek liable for all damage, under whichever name and in whichever manner caused or emerged to the leased, irrespective of whether this is the consequence of the fault of the counterparty or third parties or of Force Majeure.

Article 23 Maintenance

1. Repair of parts of the leased subject to wear and tear, such as these emerge upon expert use thereof, are for the account of Hatek and must be executed by this or by one person to be designated by it. The travel costs come for the account of the counterparty. If the leased with written permission of Hatek is used by counterparty outside the Netherlands (offshore therein included), then the maintenance referred to here, will be for the account of counterparty and must be executed by him.
2. Except for what is stated before, the costs of the normal maintenance and repair, caused or necessary on whichever basis, will be for the account of the counterparty.
3. The counterparty must in each case ensure, that cooling water, oil and battery water remain at the right level and the V-strings remain properly under tension, as well as counterparty must ensure a sufficient level of fuel.
4. Hatek has the right to check or have checked, the leased at all times. The counterparty is obliged to grant to such a check upon first request all possible cooperation.

Article 24 Stipulations with regard to the preservation of the rights of Hatek

1. The counterparty is obliged to connect the leased in such a manner to the foundation, that this without damaging of the leased or of the foundation can be removed. The counterparty is forbidden to connect the leased solidly to the foundation.
2. The counterparty commits to notify Hatek without delay of a possible attachment on the movable or immovable goods of counterparty or on the leased, including a so-called fiscal attachment of all goods on the ground by the Tax Authority, furthermore of its bankruptcy, its application to suspension of payment, as well as to give without delay to the bailiff placing the attachment, the receiver or supervisor, viewing of the lease agreement concluded with Hatek, accompanied by a copy of these terms and conditions.
3. When a conservatory or executorial attachment is placed on the movable or immovable goods of counterparty or on a part thereof, where by counterparty suspension of payment will be filed for, or when counterparty enters in a state of bankruptcy, then Hatek has the right to dissolve the lease agreement without delay, without intervention of the court, to regard it at least as dissolved, and to take back the leased again without delay, notwithstanding the right of Hatek to make its right towards counterparty, as a consequence of the lawfu l stipulations concerning the dissolution of agreements on the basis of default, valid.