

HVAC Netherland General Conditions of Sale and Delivery

Section 1

1. Definitions.

The following definitions are used in these conditions:

- HVAC: HVAC Netherlands
- Customer: the person or legal entity with

whom HVAC has entered into an agreement or is negotiating the terms of an agreement for the delivery of goods or services and/or the (sub)contracting of work by HVAC.

Section 2

1. These conditions shall apply to all transactions, under any title whatsoever, entered into by HVAC.
2. Further specification of any clause or term of these conditions or of any agreement shall be subject to the definitions provided by the latest edition of Incoterms.
3. Any deviation from these conditions shall require the written and signed confirmation of a legal representative of HVAC who is registered at the trade register.
4. Standard conditions issued by the customer shall only be valid to the extent that HVAC issues a written statement acknowledging its acceptance thereof.

Section 3

1. Requests for a judicial review of these conditions by the customer or any interest group shall not release the customer of any obligation under the agreement with HVAC, nor shall it entitle him in any way to suspend his obligations vis-à-vis HVAC.

Section 4

1. Offering letters and quotations made orally shall not be binding. Written offering letters and quotations shall be valid only for the period specified therein. Following the customer's acceptance of an agreement, it shall not enter into force until a legal representative of HVAC who is registered in the trade register has confirmed the order in writing.
2. In the event that, for reasons which are not deemed for the account and risk of HVAC, HVAC fails to perform its duties under an agreement within three months after HVAC's quotation has been accepted or within three months of the date of the agreement, HVAC shall be entitled to charge the customer for all increases in prices or rates which have occurred in the meantime.
3. In the event that, for reasons which are not deemed for the account and risk of HVAC, HVAC fails to perform all or a part of its duties under an agreement on the agreed date, HVAC's rights under the previous clause shall be applicable to the then remaining portion of the agreement.
4. Price quotes issued by HVAC shall not include value added tax and other official levies.
5. All delivery dates specified by HVAC shall be indicative only and shall not be effective until HVAC has received all necessary details. Delivery dates which have not been confirmed in writing shall not give the customer any right of compensation for late delivery.

Section 5

1. Goods delivered by HVAC shall be for the account and risk of the customer from the moment these goods are dispatched from HVAC's premises or, in the event of third party deliveries, those of the supplier. The customer shall ensure that his insurance covers this risk.
2. In all cases, HVAC's liability for losses incurred during transportation shall be limited to the amount covered by HVAC's insurance.
3. In the event of non-acceptance by the customer, HVAC will store the deliverable goods at the account and risk of the customer, upon which HVAC shall be under no obligation to undertake any further action relative to the delivery of the goods. HVAC shall be entitled to sell the goods one month after delivery, subject to a prior written notice of default having been sent.
4. Non-acceptance of delivered goods shall be considered applicable if the customer fails to accept HVAC's delivery during regular office hours for any reason whatsoever. In such case, the goods shall be deemed to have been delivered and the customer shall be deemed to have accepted them.

Section 6

1. Upon cancellation of an order, the customer shall compensate HVAC for all costs incurred by HVAC relative to the performance of its duties under the agreement, including any costs of raw materials, materials, wages and social security charges, in addition to a cancellation fee amounting to a maximum of 1/3 of the agreed price.
2. Upon cancellation, the customer shall indemnify HVAC against all claims by third parties relative to the cancellation.
3. The provisions of this clause shall not infringe upon HVAC's right to demand performance of the agreement and/or claim damages for imputable non-performance.

Section 7

1. The customer shall ensure that his insurance adequately covers all risks accountable to him by law or under the agreement, these conditions or common opinion, for the entire duration of the agreement.
2. Upon first notice, the customer shall provide HVAC with sufficient evidence to the effect that he is in compliance with the previous clause.
3. All HVAC's duties under the agreement shall be suspended until such time that the customer is in compliance with the previous clauses.

Section 8

1. The customer shall ensure that any documentation and information made available to HVAC and HVAC's use thereof does not infringe upon any rights of third parties whatsoever. The customer shall indemnify HVAC against all claims made by third parties in this respect.
2. HVAC shall retain full intellectual property rights to all designs, pictures, drawings, software, models, quotations and general information and/or know-how made available to the customer.
3. The customer shall not transfer to third parties, whether or not free of charge, designs, pictures, drawings, software, models, quotations and general information and/or know-how made available to the customer by HVAC, nor publish or use such

materials in any manner without the written permission of HVAC. Upon HVAC's written request, the customer shall return all such goods to HVAC without delay.

Section 9

1. The customer shall receive user rights only for software delivered by HVAC.
2. Upon termination of the use of software delivered by HVAC, the customer shall transfer to HVAC, forthwith and free of charge, all data carriers on which the software has been registered. If such transfer is technically unfeasible, the customer shall ensure that the registration is deleted from these data carriers.

Section 10

1. The customer shall refrain from any infringement of HVAC's copyrights and shall undertake all measures necessary to prevent any such infringement by third parties and to report any infringement by third parties to HVAC without delay.
2. The customer shall use the software delivered by HVAC solely for its designated purpose, and solely within and on behalf of its own business and/or own practice.
3. The customer shall neither access the program nor change, modify or make visible its content in any way, unless this is required for the use of the software pursuant to the previous clause.
4. The customer shall have all modifications of the delivered software desired by him implemented by HVAC.
5. In the event that the software is infringed upon by third parties or used in any manner contrary to the previous clauses, the customer involved shall be deemed to have violated the previous clauses of this section unless evidence to the contrary is provided.

Section 11

1. Violation of the provisions of sections 9 and 10 shall render the customer liable towards HVAC for an immediately payable penalty of 50,000 EUR for each violation and 10,000 EUR for each day that the violation continues, without prejudice to HVAC's right to claim full compensation for all losses, in which case the penalty shall not be deducted from the compensation.

Section 12

1. Force majeure is defined herein as any circumstance beyond HVAC's control, which is not reasonably considered to be for the account and/or risk of HVAC, including non-delivery by HVAC's suppliers and strikes or labour stoppages which interfere or completely impede HVAC's performance of its duties under the agreement.
2. In the event of an impediment due to force majeure, HVAC cannot be demanded to perform its duties under the agreement. In the event of force majeure, HVAC shall be entitled to adjust the terms of the agreement in consultation with the customer, to the effect that HVAC will be able to perform its duties under the agreement.
3. If the impediment due to force majeure lasts three months or will definitely last longer than three months, each party shall be entitled to terminate the agreement by a written notification, without prejudice to the customer's duty to compensate HVAC for goods and/or services already delivered.

Section 13

1. HVAC shall be entitled to a tolerance margin of 10% for deviating size and weight measurements and technical specifications previously reported to the customer by HVAC.
2. The provision of the previous clause may be set aside if a lower tolerance margin has been explicitly specified in writing and/or if a lower tolerance is required for the proper operation of the goods delivered by HVAC.
3. Any adjustment requested by the customer shall be considered additional work and shall be compensated by the customer.

Section 14

1. HVAC shall retain full ownership of all goods delivered by it until the customer has fulfilled all its obligations vis-à-vis HVAC relative to the delivery of the goods, including any related additional obligations, such as compensating HVAC for any losses it has made in connection with the transaction concerned and the payment of any agreed interest and collection charges.
2. The customer shall not mortgage, pledge or reserve a non-possessory pledge on the goods delivered by HVAC, until he has fulfilled all his obligations under section 14.1 above. The customer shall inform third parties who have the intention of undertaking such action of this limitation.
3. Upon the customer's failure to fulfil any of the obligations under clauses 1 and 2 above, HVAC shall be entitled to repossess the goods in question or have the goods returned. The customer provides HVAC and/or the person designated by HVAC for this purpose with the irrevocable power to enter his premises and buildings and to take all necessary action which are or may be conducive to the return of the goods.

Section 15

1. Deliverables consisting in whole or in part of a service will be delivered to the best of HVAC's abilities.
2. HVAC shall be entitled to defer the delivery of services under a phased servicing agreement to the next phase until the services delivered in the preceding phase(s) have been accepted by the customer in writing and have been paid for.
3. In the event that circumstances beyond HVAC's control hinder or delay the execution of the agreement, HVAC shall be entitled to charge all related costs to the customer.

Section 16

1. Unless otherwise agreed in writing, payment conditions are as follows:
 - 50% of the agreed price at the time of the order, payable within 8 days of the invoice date or before delivery of the goods; 50% of the agreed price upon delivery, payable within 8 days of the invoice date. Servicing and mounting; 100% of the agreed price at the time of the order, payable prior to completion of the order. Delivery of spare parts; 100% of the agreed price at the time of the order, payable within 8 days of the invoice date.
2. Non-fulfilment of the provisions of the previous subsection shall give HVAC the right to charge the customer interest at 2% of the

outstanding amount per month or a part of a month, calculated from the invoice date, including any extra-judicial collection charges incurred by HVAC, with a minimum of 15% of the outstanding amount.

3. All costs incurred by HVAC for third party debt collection services shall be payable by the customer to HVAC.
4. Upon HVAC's first request, the customer shall provide security for the fulfilment of the agreement. Insofar as the customer fails to provide such security, HVAC shall be entitled to dissolve the agreement and claim compensation for the expenses incurred, without prejudice to HVAC's right to claim damages.
5. The customer's right to set off any counterclaims is explicitly excluded.

Section 17

1. The customer is shall be in default if he fails to fulfil his obligations under the agreement within 10 days after the dispatch of a written demand to this effect.
2. With effect of the time that the customer is in default vis-à-vis HVAC, all agreed instalments will become payable with immediate effect.
3. With effect of the time that the customer fails to fulfil any of his obligation vis-à-vis HVAC, HVAC will be entitled, with immediate effect, to suspend its obligations towards the customer until the customer either fulfils all his obligations vis-à-vis HVAC or provides adequate security for the fulfilment of such obligations, including payment of the instalments referred to in the previous clause. The customer's right to suspend his obligations is explicitly excluded.
4. The customer's right to dissolve the agreement shall be preceded by a notice of default sent to HVAC by registered mail, by which HVAC is given the opportunity to either fulfil its duties under the agreement or carry out repairs. The customer shall not be entitled to dissolve the agreement if he himself fails to fulfil his obligations. If HVAC agrees to dissolve the agreement, the customer shall compensate HVAC for all costs actually incurred by HVAC as well as a dissolution fee of up to 1/3 of the agreed price, without prejudice to HVAC's right to claim damages.
5. In the event that the customer fails to fulfil any of its obligations vis-à-vis HVAC for 30 days, HVAC shall be entitled to terminate the agreement by means of a written notification, without prejudice to HVAC's right to claim payment of any goods already delivered and/or services already performed, in addition to compensation for any losses arising from the accountable non-performance of other obligations.
6. In the event that the customer dies, applies for suspension of payments, is declared bankrupt, a substantial portion of his assets are seized, or his company is wound up, the agreement will be dissolved forthwith, without judicial interference and all HVAC's claims under the agreement shall be due and payable with immediate effect.

Section 18

1. HVAC shall guarantee the proper functioning of the delivered goods for a period of 12 months after delivery, unless the established faults are the result of the customer's failure to use the goods in accordance with the instructions provided by HVAC or of any other improper use of the goods.
2. In order to invoke the guarantee, the customer shall in all cases allow HVAC to repair a fault.
3. Faults caused by normal wear and tear or faults arising after repairs performed by the customer or on his behalf, shall not be covered by this guarantee.
4. The guarantee is subject to the customer fulfilling all his financial obligations.
5. HVAC's liability shall be limited to repairing the fault or replacing the goods, in whole or in part, free of charge, to be determined at the discretion of HVAC.
6. The customer shall report faults which can be established by thorough research to HVAC by registered letter within the agreed period, and in any case within 8 days of the delivery of the goods or after the fault should reasonably have been established; the customer's failure to follow this procedure will cause him to lose his right to make any claim.

Section 19

1. In the event that the customer incurs a loss as a result of an event which according to common opinion should be covered by the insurance of HVAC, HVAC's liability shall be limited to the amount received by HVAC under the insurance policy, or the amount HVAC would have received if it had been covered by such an insurance policy.
2. HVAC shall not be held liable in the event that the customer's properties are damaged during HVAC's mounting or fitting activities, unless such damage is covered by the customer's insurance.
3. HVAC's liability for (faults in) goods and/or services delivered by third parties which are used by HVAC in the execution of the agreement, shall be limited to the amount which HVAC can claim from the third parties in question under its agreement with those third parties, or – in the event of a dispute – under a settlement or judicial judgment.
4. HVAC shall not be liable for any loss incurred by the customer due to delays or operational and other losses of any nature whatsoever.
5. HVAC's liability towards the customer shall be limited to repairing the established faults or the proper delivery of the services and shall not exceed the amount invoiced to the customer.

Section 20

1. All agreements shall be subject to the laws of the Netherlands.
2. All disputes with regard to an agreement between HVAC and the customer and/or the fulfillment of the duties there under, which under subject-matter competence fall within the jurisdiction of the district court, shall be brought exclusively before the district court of Haarlem.