



PODS

General terms and conditions



General terms and conditions FONS b.v.

Toepasselijkheid

1. These general terms and conditions apply to – and form an integral part of – every offer, quotation and agreement that relates to products of whatever nature to be supplied by FONS BV established in Breda, hereinafter referred to as “ user ”, unless expressly agreed otherwise in writing.

2. In these general terms and conditions, “ the customer ” means : any (legal) person who orders and/or buys goods from or through the user.

1. It is only possible to deviate from these terms and conditions if the parties have expressly agreed so in writing.

Conclusion and amendment of the agreement

1. All offers and quotations made by the user, in whatever form, are without obligation unless a term for acceptance is included in the offer. An agreement is only concluded by written (order) confirmation from the user or by actual execution by the user.

2. All indications in offers, quotations or agreements and the appendices thereto, such as images, drawings, sizes, weights, yields and colours, as well as the properties of any sample copies provided are only indicative. Minor deviations are therefore not at the expense and risk of the user.

3. Obvious errors or mistakes in the offers of the user release it from the obligation to fulfill and/or any obligations to pay compensation arising therefrom, even after the conclusion of the agreement.

Performance of the agreement

1. If the customer refuses to take delivery at the agreed time, or is negligent in providing information or instructions that are necessary for the delivery, the user is entitled to store the products at the expense and risk of the customer.

2. Goods are deemed to have been delivered as soon as the user has notified the customer that the goods, whether or not yet to be assembled in whole or in part, are ready at the user's or a third party's place for collection by the customer or for to be sent to the customer. From the moment of delivery, the delivered goods are at the risk of the customer.

3. If the parties expressly agree that the user will take care of the transport of the products, both the costs and the risk of loss or damage during transport are for the account of the customer.

4. The statement of delivery times in offers, quotations, agreements or otherwise is always made by the user to the best of its knowledge and these terms will be observed as much as possible, but they are not binding.

Prices

1. All prices are in euro's and include Dutch VAT and other levies imposed by the Dutch government. Any special extra costs related to the import and/or customs clearance of items to be delivered by the user to the customer are not included in the price and are therefore for the account of the customer.

2. The amounts shown in the offers of the user are based on the prices, exchange rates, wages, taxes and other factors relevant to the price level that exist during the offer. If one or more of the factors mentioned are changed after the (order) confirmation , the user is entitled to adjust the agreed price accordingly. If a price increase is made pursuant to the present provision, and the increase amounts to more than 10% of the total agreed amount, the customer has the right to dissolve the agreement in writing within eight days after it is or could have become aware of the price increase.

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Payment

1. Payment must always be made within 30 days of the invoice date or upon delivery of the products. The customer is not entitled to set off any claim against the user against the amounts charged by the user.
2. User always has the right to deliver or to invoice delivered goods per partial delivery.
3. Payment is made by deposit or transfer to a bank account designated by the user.

User has always the right to demand security for the payment or advance payment both before and after the agreement is concluded, such under suspension of the execution of the agreement by the user, until the security has been provided and/or the advance payment has been received by the user. If advance payment is refused, the user is authorized to dissolve the agreement and the customer is liable for the resulting damage for the user.

4. The user is entitled to suspend the delivery of products that it has for the customer in connection with the performance of the agreed work until all payments owed by the customer to the user have been paid in full.

5. If payment is not made on time, the customer is legally in default without a notice of default being required. From that moment on, the customer owes the user statutory commercial interest as referred to in article 6:119a of the Dutch Civil Code.

6. In the event that no payment has been received after the expiry of a further payment term set by a written reminder, the customer owes a penalty equal to 10% of the principal owed by the customer to the user, including VAT, regardless of whether the user has had to incur extrajudicial collection costs. and without prejudice to the user's right to claim compensation.

7. Without prejudice to the other rights of the user under this article, the customer is obliged towards the user to reimburse the collection costs that the user has had to incur and which go further than sending a single summons or merely doing a – not accepted – settlement proposal, obtaining simple information or compiling the file in the usual way. These costs are determined on the basis of the guidelines applicable at that time at courts in the Netherlands.

8. The applicability of article 6:92 of the Dutch Civil Code is excluded with regard to the penalty clause included in this article.

Guarantee

1. If the user provides the customer with a warranty claim with regard to the work or products it has delivered or to be delivered, it will expressly inform the customer of this in writing. In the absence of such an express written notification, the customer cannot invoke the warranty, without prejudice to his legal rights arising from mandatory provisions. We refer to our warranty conditions for this.

2. If an appeal to the customer's warranty would be justified, the user will repair the products to be delivered - at the user's choice - or still deliver them as agreed, unless this would have become demonstrably pointless for the customer in the meantime. If the user informs the customer that it will proceed with the repair, the customer will make the delivered products available to the user again, at its expense and risk.

3. All possible warranty obligations of the user lapse if errors, defects or imperfections with regard to those goods are the result of incorrect, careless or incompetent use or management of delivered goods by the customer or third parties engaged by the customer or if they are the result of external causes such as fire or water damage, or if the customer or a third party makes changes to the goods supplied by the user without the user's consent has installed or has had it installed.

Complaints

1. Any complaints about a product supplied by the user must be immediately communicated by the customer to the user in writing and with reasons. If 30 days have elapsed after delivery of the products, the customer can no longer make a justified complaint, unless the defect at the time of delivery would not have been noticeable during a careful and timely check. In that case, the customer must inform the user of the defect in writing, stating reasons, within 5 days after the defect has become or could have become known to the customer.

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2. Without prior written consent, the user is not obliged to accept returns from the customer. Receipt of return shipments in no way implies acknowledgment by the user of the ground specified by the customer for return shipment. The risk with regard to returned products remains with the customer until the products have been credited by the user.

3. If the customer invokes a possibly agreed guarantee scheme, but that appeal subsequently turns out to be unjustified, the user has the right to charge the customer for the work and costs of investigation and repair that have arisen on its part from that appeal in accordance with its usual rates, with a minimum of € 100.00.

Retention of title

1. All products to be delivered and delivered by the user remain the property of the user under all circumstances, as long as the customer has any claim from the user, including in any case the purchase price, extrajudicial costs, interest, fines and any other claims as referred to in Article 3:92, paragraph 2 of the Dutch Civil Code, has not complied.

2. The customer is obliged to keep the products delivered under retention of title with due care and as recognizable property of the user.

3. The customer is not authorized to pledge to third parties, otherwise encumber them or transfer them in whole or in part, as long as the ownership thereof has not passed to it, except insofar as this transfer is carried out in the course of the usual business activities of the customer takes place.

4. If the customer fails to fulfill its payment obligations towards the user or if the user has good reason to fear that the customer will fail in those obligations, the user is entitled to take back the goods delivered subject to retention of title. The customer will cooperate and grant the user free access at all times to its sites and/or buildings for the purpose of inspecting the goods and/or exercising the user's rights. After repossession, the customer will be credited for the market value, which can in no case be higher than the original price that the customer had agreed with the user, less the costs arising for the user from the repossession.

Dissolution and termination of the agreement

1. The customer is deemed to be in default if it does not fulfill any obligation under the agreement or does not fulfill it on time, as well as if the customer does not comply with a written reminder to fully comply within a set reasonable period.

2. In the event of default on the part of the customer, the user is entitled, without any obligation to pay compensation, and without prejudice to its rights, to dissolve the agreement in whole or in part by means of a written notice to the customer for this purpose and/or possibly by the customer to immediately claim the amount owed by the user in its entirety and/or to invoke the retention of title.

3. User may rescind the contract with immediate effect to dissolve if the customer applies for suspension of payments or bankruptcy or is requested or seizure of all or establishes a portion of its power against him. All invoiced amounts will then become immediately due and payable. Because of these the user is never be bound to any compensation.

Force majeure

1. User is not liable if a shortcoming is the result of force majeure. During the period in which there is force majeure, the obligations of the user are suspended. If the period in which the fulfillment of the obligations by the user is not possible due to force majeure lasts longer than 12 months, both parties are entitled to dissolve the agreement without judicial intervention, without any obligation to pay compensation in this regard.

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2. The term 'force majeure' as referred to in this article is in any case understood to mean unforeseen circumstances, also of an economic nature, which have arisen through no fault or fault of the user, such as, among other things, serious disruption in the company, forced reduction of the production, strikes and lockouts, both at the user and at the supply companies, war, hostilities, martial law, mobilization, either in the Netherlands or in any other country where any branches of the user or of the supply companies are located, delays in transport or delayed or incorrect delivery of goods or materials or parts by third parties, including supply companies of the user.

3. If the user has already partially fulfilled its obligations upon the occurrence of force majeure, or can only partially fulfill its obligations, it is entitled to invoice the already delivered or the deliverable part separately and the customer is obliged to pay this invoice as it's a separate agreement.

Liability

1. The user is only liable for damage suffered by the customer, if and insofar as that damage is the direct result of intent or willful recklessness on the part of the user's managers.

2. The total liability of the user will in all cases be limited to compensation for direct damage, whereby the total amount to be paid by the user to the customer on account of any cancellation obligations and compensation for damage will never exceed the maximum amount of the price stipulated in that agreement (excluding VAT).

3. The user is not liable for damage if and insofar as the customer has taken out insurance or could reasonably have insured himself against the damage in question.

2. Disputes applicable law

2.1. If there is a lack of clarity regarding the interpretation of one or more provisions of these general terms and conditions, the interpretation of that provision(s) must take place 'in the spirit' of these general terms and conditions.

2.2. Dutch law applies to an agreement concluded with the user. Foreign legislation and treaties including the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 (Vienna Sales Convention) are excluded.

2.3. All possible disputes relating to this agreement or arising from this agreement will be settled in the first instance by the competent court in the district in which the user is established at the time of conclusion of this agreement.

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