

Houweling Group | General terms of delivery (EN)

Article 1 Definitions

In these general conditions the following terms are used in the following sense.

User: the user of the general conditions, i.e. the private companies Houweling International bv, Houweling Horticulture bv, Houweling Veiligheid bv, Dutch Grow bv and European Polymer Logistics bv;

The other party: the counterparty;

Agreement: The agreement relating to the delivery of goods by the user;

Delivery: the goods and services that have to be delivered by the other party to the users on the basis of the agreement.

Article 2 Applicability

1. These conditions apply to all agreements within the meaning of Article 1 of these terms and to offers delivered by the user with a view to concluding such agreements. The terms also apply to an agreement with the user that not only but also extends to the delivery of goods by the user.
2. Abnormal conditions, such as purchase conditions of the other party, only bind users if this has been expressly agreed upon in writing and by user for each case separately.
3. In case of conflict between these general terms and other general terms with the applicability to which the user has agreed, these terms shall prevail.
4. If any other general conditions apply to any agreement, the general terms which have the most appropriate nature for the agreement will always prevail.

Article 3 Offers and Deals

1. Offers made by the user are valid for the period stated in the offer and subsequently don't bind the user in any way.
2. Prices specified in an offer are exclusive of VAT and other government levies, insurance, freight and delivery charges, unless stated otherwise.
3. Delivery terms are indicative and not binding for users. Exceeding the delivery does not give the other party the right to terminate the agreement or demand a compensation.
4. Other offers, in any form, and information contained in publications of the user are not binding for the user.

Article 4 Conclusion and content of agreements

1. Agreements are formed by the confirmation of the user, even if the other party accepts an offer made. A bill of lading or invoice sent by the user are also considered as a confirmation of the agreement which includes the items listed on the bill of lading or invoice.
2. The content of the agreement is determined by the user's confirmation. If the nature or quantity of the service as described in the confirmation of the agreement differs from a prior thereto sent order or offer, then the order confirmation determines what has been agreed between the parties.
3. If the costs for the user are increased between the time of conclusion of the contract and the delivery, then the user is entitled to adjust the price accordingly. The user will inform the other party directly and at least before the delivery about this. In case of a price increase of more than 10% the other party has the right to end the agreement, after which both parties will not be obliged to pay any damages.

Article 5 Delivery and limit liability

1. Goods are delivered ex warehouse or ex works, unless otherwise agreed.
2. The user is entitled to execute orders in installments.
3. The sizes, colors, weights and other characteristics of all materials can vary within usual margins. The user does not guarantee that the goods are suitable for the purpose for which the other party wishes to treat, process or use them and assumes no liability for the usability of the purchased items for the action to be pursued.
4. Anyway, any liability of the user for damages in relation to any delivery obligation of the user, the delivered goods or the use or application, and the properties or quality of the goods delivered is limited to the obligation to replace the goods delivered or crediting the amount invoiced for the delivered goods.
5. If upon delivery damage of goods is detected as a result of transport, this should be reported to the carrier upon arrival and noted on the transport document and reported to the user within 24 hours.

Article 6 Disclosure

The other party will provide all information to the user that is important for the implementation of the agreement.

Article 7 Complaints

1. The other party must inspect the goods immediately upon delivery for any deviations to the agreement.
2. Complaints must be made within seven days of receipt of the goods and/or service provision and this in writing to the user, specifying such data that enables the user to evaluate the nature of the complaint. After the expiry of this period the delivered items are irrevocably and unconditionally accepted by the other party.
3. Complaints relating to matters that are collected should be done immediately upon delivery.
4. Defects that occur later than six months after delivery of the goods or services or that only then occur or defects that are the result of improper use of the delivered goods c.q. services can never be regarded as breach of user.

Article 8 Payment

1. Payment must be made in legal Dutch tender no later than on the due date - without suspension, deduction or set-off against a claim that the other party has on the user - by deposit or transfer to the account specified by user
2. The other party is in default by the mere lapse of a certain period and then has to pay an interest of 1% per month, unless the statutory interest is higher, in which case the statutory interest rate applies.
3. Payments made by the other party are firstly used to reduce the costs, then to reduce the interest due and finally to reduce the principal and accrued interest. The other party is not entitled to appoint a different sequence of attribution with the payment.
4. If the other party is in default, all reasonable costs incurred for obtaining payment are on behalf of the client. Extrajudicial collection costs amount to at least 15% of the outstanding amount, as well as € 50, - administration costs. Between the parties, Article 6:96 of the Civil Code paragraphs 4 and 6, expressly including the reference to the maximum amount to be reimbursed to extrajudicial costs, will not apply.
5. Possibly reasonable judicial and execution costs will also be borne by the other party.

Article 9 Retention

1. All goods delivered remain property of the user until the time when the other party has fulfilled all obligations arising from or in connection with agreements to which the user has agreed to deliver.
2. The other party is required to keep goods delivered to her by the user separately from other goods and to store them with the clear identification as user's property and to keep it for the user.
3. At the first demand of the user, the other party must put the items kept for the user at the disposal of the latter if there is reasonable fear that the other party will not fulfill any obligation referred to in the first paragraph of this article towards the user. If the other party does not provide its cooperation on the aforesaid manner, the user without notice is entitled to take possession of the goods delivered immediately. In that case the other party gives, now and at that time, its unconditional and irrevocable permission to the user or to a by it appointed third to visit all sites on which the user's property is located and to take that property back.
4. Having regard to the first paragraph of this article, goods delivered by the user to the other party will never fall under any lien that the other party agrees upon with its financier or any other third party or at the time of actual delivery has already been agreed upon.
5. As long as the ownership of the goods delivered has not been passed on to the other party in accordance with the provisions paragraph 1 of this article, that party is not entitled to alienate that property in question. When the goods in question nevertheless have been delivered to a third party, than the other party, against its customer, will reserve the property on behalf of user in the manner prescribed in this article. And the other party will give the user all data on the delivery to the third party.
6. If the retention of title is extinguished - for example by selling, processing, component molding or mixing - a right of user on the new object or the resulting claim on the purchase price or otherwise comes in place, as far as the situation referred to in Article 10:128 paragraph 2 CC occurs.

Article 10 Transfer of rights and obligations

1. The other party may not assign, pledge or transfer under any title the rights and obligations arising under the contract to a third party without prior written consent.
2. The user is authorized under the agreement between the parties to transfer its rights and obligations to an affiliated group company. As far as required the other party gives its consent in advance under Article 6: 159 BW by entering into the agreement with the user.

Article 11 Suspension and termination

1. The user is authorized to suspend or terminate the agreement on fulfillment of obligations to the other party if:
 - the other party does not fully comply with its obligations under the agreement between the parties;
 - the user learns about circumstances after the conclusion of the agreement that give good reason to fear that the other party will not fulfill its obligations;
 - the other party has been requested when concluding the agreement to provide security for the fulfillment of his obligations under the agreement and this security fails or is insufficient.
2. Furthermore, the user is authorized to terminate the agreement/to have it terminated if circumstances arise of such nature that fulfillment of the contract becomes impossible or concerning standards of reasonableness and fairness can no longer be required or if other circumstances arise of such nature that the unaltered maintenance of the agreement cannot reasonably be expected.
3. If the agreement is dissolved, the user's claims against the other party are immediately due and payable.
4. If the user suspends the fulfillment of the obligations, he retains his rights under the law and agreement.
5. The user always retains the right to claim damages.

Article 12 Samples and models

If the other party is shown or given a sample or a model, then it is assumed to be provided as an indication, unless expressly agreed that the delivered product will correspond to it.

Article 13 Disputes and applicable law

1. All disputes arising from an agreement between the user and the other party will be submitted to the competent court in Rotterdam. Nevertheless the user always has the right to submit the dispute to the competent court according to law.
2. Any agreement between the user and the other party is governed by Dutch law.