

Houweling Group | General terms of service (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 Transport bv, Houweling Horticulture bv, Houweling Veiligheid bv, Houweling Holding bv, Houweling Warehouseing bv, Dutch Grow bv and European Polymer Logistics bv;

The other party: the counterparty;

Agreement: the agreement for the provision of services by the user;

Cold-storage agreement: agreement between the user and the other party concerning the storage of the items of the user, also referred to as warehouse services.

Article 2 Applicability

- 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 concerning services delivered by the user.
- Abnormal conditions, such as purchase conditions of the other party, only bind users if this has been expressly agreed upon in writing and by the management of the user for each case separately.
- In case of conflict between these general terms and other general terms with the applicability to which user has agreed, these terms shall prevail.
- 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

- Offers made by the user are valid for the period stated in the offer and subsequently don't bind the user in any way.
- Prices specified in an offer are exclusive of VAT and other government levies, insurance, freight and delivery charges, unless stated otherwise.
- 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

- 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.
- The content of the agreement is determined by the user's confirmation. If the nature or quality 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.
- If the costs for the user are increased between the time of conclusion of the contract and the time when the services are actually carried out, then the user is entitled to adjust the price accordingly. The user shall inform the other party immediately in this regard. 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. In any case the other party is obliged to proportionately pay the price for services already provided.

Article 5 Services, information and limit liability

- The services that have to be delivered by the user to the other party are defined as precisely as possible in the conformation of the agreement by the user and this concerning their nature, size and, where appropriate, duration.
- The other party is obliged to ensure that the goods are available for the user at the agreed place and time.
- The other party will not offer dangerous substances as defined in Article 1 of the Act on the transport of hazardous substances to the user for transport or storage or otherwise.
- The other party will provide the user, requested and unsolicited, with all information that is relevant or could be relevant for the user to identify the services and any associated risks. In particular, but not exclusively, when the service by the user concerns transport or warehousing services, the other party will mention the substances and objects that concern the service of the user and they will hereby disclaim all known risks thereof and the invoice value of the items in question.
- Notwithstanding the provisions in the preceding paragraph, the other party will provide the user, asked and unsolicited, with information that is important to determine the required characteristics and quality of packaging, storage and transport equipment and the other party will guarantee the accuracy and completeness of this information.
- If the service by the user exists of taking and/or cleaning of packaging materials, then the other party will always make a written statement of the content of the packaging materials.
- In case of force majeure, the contract remains in force, under suspension of the obligations of the user for the duration of the force majeure. If the force majeure or the suspension causes additional costs, such as additional costs for transport and storage, then these will be at the expense of the other party, who will reimburse the costs at request to users.
- Agreements concerning the fact that the user, whether in return for payment by the other party or not, gives trainings to persons appointed by the other party, are carried out according to the best of knowledge and ability by the user or on behalf of the user. The user is not liable for any inaccuracy and incompleteness of information provided in the training.
- Notwithstanding the other provisions determined in these terms and conditions or in the agreement between the user and the other party, any liability of the user is limited to the invoice value proven by the other party for the to the user entrusted matters, like it is communicated to the user by the other party during or after the conclusion of the agreement. The user is never liable for any consequential damages from the other party or third parties.
- Specified deadlines for service provisions and deliveries are indicative and not binding for the user. The user will make an effort to make sure that the service or delivery takes place within the indicative deadline. Exceeding a time limit for compliance by the user of the agreement does not give the other party the right for termination of the agreement or compensation, unless the parties have expressly agreed that the delivery must take place at a certain time.

Article 6 Risks and the insurance thereof

- All storage and transport of goods takes place at the expense and risk of the other party, which therefore always has to be adequately insured against all risks that can occur with the storage and transport during the duration of the storage or transport.
- The user will only take out an insurance/have an insurance taken out at the written instruction of the other party with regard to the affairs of the other party. With this task the other party will specifically state the risks to be insured, including the value of those items.

Article 7 Delivery or collecting goods at the user

- If the user has communicated a time to the other party on which the goods will be delivered or collected, then the other party ensures that all necessary steps have been taken at the appropriate time to effectuate the offer of the items. If the other party does not properly and timely provides, or collects, the items, then it is liable for all damages and costs arising therefrom. The other party indemnifies the user against all claims that third parties would set up in this connection with this.
- Unless otherwise agreed, the goods will be delivered to the user in good condition and, if necessary, properly packed and clearly marked. The user accepts no liability for damage resulting from missing or unsuitable packaging.
- All needed information to identify the goods needs to be arranged in such way that reading of the information is immediately possible.
- The user is entitled to refuse items that are visibly damaged or that are in poor condition or that are not identifiable and this while stating the reason for the refusal.

Article 8 Duration of the cold-storage agreement

- If a cold-storage agreement has been agreed for a specified period, this agreement will only end by time lapse, unless the parties have expressly agreed otherwise.
- If a storage agreement has been concluded for an indefinite period, both parties have the right to terminate the agreement by serving a notice of one month.

Article 9 Withdrawal of the goods placed in storage

- The other party is obliged to take back its items no later than the last day of the period on which the agreement expires.
- If the other party fails to take back its items in time and even after written notice of default does not revoke its items within a week, then the user is entitled to take all necessary measures for the evacuation of the provided storage space, all at the expense and risk of the other party.
- For use of storage without a cold-storage agreement, the other party has to pay the user a fee amounting to 150% of the most recently calculated storage rate to the other party.
- In compliance with the other provisions in these terms and conditions, the other party will always have the right to take back its stored goods after payment of all amounts, irrespective of its nature, due to the user.

Article 10 Termination of the cold-storage agreement on basis of compelling reasons

- The user always has the right to terminate the cold-storage agreement without notice if an urgent reason therefor exists.
- An urgent reason as referred to in the previous paragraph occurs, among other things:
 - if the other party has failed to comply with the terms of the cold-storage agreement or if it has acted contrary to this agreement, provided that the breach is sufficiently serious;
 - if the storage facility of the user becomes temporary or not, wholly or partially useless for the agreed storage under contract;
 - if the items in storage lead to fear of loss or damage to other stored goods or the storage facility itself, or for death or injury to persons;
 - if the stored goods are perishable or if changes to these items occur that give rise to assume that these items loss quality and the other party does not give clear instructions to prevent or eliminate this.
- In case of termination on foot of the provisions of this article, the user will never be obliged to pay any damages to the other party or third parties.

Article 11 Complaints

- Complaints must be made within seven days of receipt of the goods by the other party 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.
- The other party must keep the goods to which a complaint relates separate for the benefit of the user.
- If 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.
- 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 12 Payment

- 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
- 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.
- 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.
- 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 both parties article 6: 96 Civil Code, paragraphs 4 and 6, expressly including the reference to the maximum amount to be reimbursed to extrajudicial costs, will not apply.
- The user will have the right of retention and a lien on all items of the other party that user holds at any time, and this as a security for the payment of all that the other party has to pay or will have to pay to the user. The lien is established by the mere entering into the agreement and giving power of use to the user and ends because the user has disclosed items to the other party. For the storage of items of the other party in connection with the exercise of the lien c.q. the right of retention, the other party will pay a storage fee that is at least equal to the usual contractual compensation that the user charges to its customers.
- Possibly reasonable judicial and execution costs will also be borne by the other party.

Article 13 Transfer of rights and obligations

- 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.
- 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 14 Suspension and termination

- 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 if;
 - 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.
- Furthermore, the user is authorized to dissolve the agreement (have the agreement dissolved) if circumstances arise of such nature that fulfillment of the contract becomes impossible or cannot be longer expected subject to standards of reasonableness and fairness or whenever circumstances in a different way arise of such nature that the unaltered maintenance of the agreement cannot reasonably be expected.
- If the agreement is dissolved, the user's claims against the other party are immediately due and payable.
- If the user suspends the fulfillment of the obligations, he retains his rights under the law and agreement.
- The user always retains the right to claim damages.

Article 15 Samples and models

Is 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 16 Disputes and applicable law

- 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 has the right to submit the dispute to the competent court according to law.
- Any agreement between the user and the other party is governed by Dutch law.