

The general terms and conditions for the De Hildering Groep and group companies

Clause 1 General

1. Hildering Packaging B.V., Hildering Industrial Packaging B.V., Go!Paint B.V. [and Hildering Innovations B.V.] are group companies of De Hildering Groep B.V.
2. In these terms and conditions, the term "Seller" shall be understood to mean Hildering Packaging B.V., Go!Paint B.V. or another group company in the De Hildering Groep.
3. These general terms and conditions shall apply to any offers and all quotations, order confirmations and supplies from the Seller and shall constitute a fundamental part of the (sales) contract between the Seller and the Other Party. Other general terms and conditions shall not apply and shall not be permitted to replace these General Terms and Conditions, except where explicitly agreed otherwise with the Seller.

Clause 2 Quotations and offers

1. Any quotations that the Seller issues shall be free of obligation and shall be valid for 30 days, except where explicitly stated otherwise. The contract ("Sales Contract") between the Seller and the Other Party shall be entered into by means of a written confirmation of the order by the Seller.
2. A combined quotation shall not oblige the Seller to perform part of the contract for a corresponding part of the price specified. Offers or quotations shall not apply automatically to future orders. Clear mistakes or clear errors in an offer shall not bind the Seller to the offer in question. The prices stated in the quotation shall be binding.
3. Except where stated otherwise, all prices shall be exclusive of turnover tax (VAT) and other taxes and levies that are imposed in relation to the sale and delivery of the goods and the costs of dispatch.

Clause 3 Performance of the contract

1. If the Seller requires information from the Other Party to be able to perform the Contract, the performance period shall not commence before the Other Party has made the said information available to the Seller correctly and in full.
2. The Seller shall assume that the samples, drawings, models shown, dimensions, sizes, quantities, weights, colours, materials, material structure, finish and/or other information that the Other Party provides to the Seller are correct and satisfactory without any further inquiries.
3. The Seller shall retain the right to indicate its name, brand and/or coding on the goods.
4. Without prejudice to the provisions of Subclause 5 below, the goods delivered shall be in compliance with the Sales Contract if observable characteristics, such as dimensions, inscriptions, colours and suchlike, correspond with samples and/or specimens that the buyer has approved.
5. Goods that have been delivered shall also be deemed to be in compliance with the Sales Contract in the event of normal production-inherent differences, variations and differences in construction, and also in the event of colour differences and nuances, regardless of whether these occur within the same or different deliveries, even if sold on sample or specimen.
6. If a period of time has been agreed on or specified for the completion of certain activities or for the delivery of certain goods, this shall never be a strict deadline. If a period of time is exceeded, the Other Party shall be required to issue the Seller with a written notice of default. The Seller shall also be offered a reasonable period of time, being a minimum of 30 days, to perform the contract at the point in time at question.

Clause 4 Delivery

1. The Seller shall effect delivery ex warehouse, except where stated otherwise in the quotation. The Other Party shall be obliged to buy the goods at the time at which they are made available to it. If the Other Party refuses to purchase goods or fails to provide the information or instructions that are necessary to be able to effect delivery, the Seller shall be entitled to store the goods at the expense and risk of the Other Party.
2. The risk of the loss of or damage to the goods shall pass to the Other Party at the time of delivery in accordance with the terms of delivery agreed on as referred to in Subclause 1.
3. The quantities stated in the dispatch documents (such as road waybills and documentation evidencing the receipt of the goods dispatched) shall be presumed to be in order, except where the contrary is proven.
4. Except where explicitly agreed otherwise, the Seller shall be able to supply a maximum of 10% more or less of the quantity agreed. The total purchase price shall be increased or reduced accordingly.
5. If delivery of a product that has been ordered proves to be impossible, the Seller shall endeavour to make an alternative article available. The fact that an alternative article is being supplied shall be stated clearly and in an understandable manner upon delivery at the latest.

6. The Seller shall be entitled to perform the contract in a number of stages and to invoice the part performed in this manner separately

Clause 5 Packaging

1. Packaging, the nature of which shall be determined by the Seller, shall be included in the price. The Seller shall be able to charge a hire price for packaging.
2. Packaging material shall remain the property of the Seller at all times, with the exception of one-off packaging material, such as shrinkwrap, paper bags and cardboard boxes. The Seller shall not be obliged to take back one-off packaging material. Packaging materials for which a deposit (or a security deposit) has been charged shall be sent back to the Seller as prepaid return freight immediately after the corresponding goods have been unloaded, in the absence of which the Seller shall be authorised not to reimburse the Other Party for the deposit or security deposit charged. The Other Party shall be credited for the packaging material returned, which shall be the amount for which it was previously charged in this respect.

Clause 6 Transfer of ownership / reservation of ownership

1. All goods delivered by the Seller remain the property of Seller until such time that the Other Party has completely fulfilled all his obligations towards Seller pursuant to any agreement for the delivery of goods and/or work performed and/or services performed, including claims regarding the failure in the performance of such agreements.
2. During the period in which ownership of the goods remains with the Seller, the Other Party shall hold the goods in trust for the Seller. If the Other Party fails to pay any amount due in accordance with the payment terms stated on an invoice, the Seller shall be authorised to regain possession of the goods without any prior notification.
3. The Other party is required to mark the goods supplied at any time as being the property of and originating from Seller. The proof of transfer of ownership to the Other Party will have to be provided by the Other Party. If case Seller invokes the retention of title claims, the Other Party is obliged to provide all cooperation in order to enable Seller to take possession of the relevant goods.

Clause 7 Payment

1. The full net purchase price shall be paid to the bank account held by the Seller in accordance with the terms of payment specified in the invoice. If the Other Party fails to pay within the period of time allowed for this purpose, the Other Party shall be in default without any notice of default being necessary and the following shall apply, without any prejudice to any other rights that the Seller has:
 - a) In the event of non-payment, the Other Party shall be required to pay interest of at 1.5% per month on the amount outstanding; and
 - b) The Other Party shall bear all costs, including judicial costs, incurred in order to obtain payment of the amount due from the Other Party.
2. The Seller shall be entitled to require advance payment of all or part of the invoice.
3. Payments by the Other Party shall serve firstly to settle any debts that are outstanding from the Other Party to the Seller, in chronological order of the due dates for the debts. Any right of setoff shall be precluded.
4. In the event of delivery on demand by the Other Party, the Seller shall be entitled, six months after the entry into operation of the contract, to invoice the Other Party for the difference between the amounts already invoiced and 70% of the total purchase price, plus storage and/or processing costs for any goods that have already been produced (whether partially or in full) but not demanded and are to be destroyed or used for purposes other than delivery to the Other Party and to charge the Other Party the costs associated therewith, as well as any storage and/or processing costs not yet invoiced. After a year, the Seller shall also be entitled to invoice the remainder of the purchase price that has not been charged in full yet.
5. The Seller shall at all times be entitled to require payment or payment security before performing a Sales Contract.

Clause 8 Liability

1. The Seller shall not provide any guarantee or confirmation, whether explicitly or tacitly, relating to the practicability, adequacy, saleability or suitability of the goods delivered for any purpose, except where explicitly stated in writing. The correctness of the information that the Seller provides about quality and the composition of the goods and their possible uses shall only be guaranteed if a guarantee of this nature is included explicitly in the sales contract.
2. The Seller shall only be liable for direct damage or loss that is attributable to it. The liability of the Seller shall never exceed the net sales price of the goods delivered. Direct loss or damage shall only be understood to mean:
 - a. reasonable costs incurred in order to establish the cause and extent of the loss or damage, insofar as the establishment relates to damage or loss in the sense of these terms and conditions;

- b. any reasonable costs necessary to ensure that defective performance by the Seller is brought into compliance with the contract;
 - c. reasonable costs, incurred in order to avoid or limit damage or loss, insofar as the Other Party demonstrates that the costs in question resulted in the limitation of the direct loss or damage as referred to in these general terms and conditions.
- The liability of the Seller for all other damage or loss other than that stated above, such as indirect damage or loss, including consequential loss or damage, lost profit, defective or lost data or materials, or loss as a result of business interruption, shall be precluded.
3. All information, including advice, ideas, opinions and/or instructions, shall have been put together with all due care and to the best of the knowledge of the Seller. However, the Seller shall not be able to guarantee the correctness or completeness of the information in any manner whatsoever. As such, the Seller shall not accept any liability whatsoever for loss or damage of whatever nature that is the result of actions and/or decisions based on the aforementioned material.

Clause 9 Guarantee and complaints

1. The goods to be delivered by the Seller shall be in compliance with the customary requirements and norms that can reasonably be imposed on them at the time of delivery and for which they are intended under normal use.
2. Upon receipt of the goods, the Other Party shall inspect the said goods with a level of care that is customary or applicable under the circumstances. The Other Party shall notify the Seller of complaints relating to the quality or quantity of the goods delivered within eight days of the receipt of the goods. Goods shall not be returned to the Seller without the prior written permission of the Seller.

Clause 10 Force majeure

1. The Seller shall not be obliged to fulfil any obligation towards the Other Party if it is prevented from doing so as a result of a situation that cannot be attributed to it and that are not for its account by law, by virtue of a legal act or by virtue of generally accepted practice.
2. In these general terms and conditions, force majeure shall have the definition accorded to it by law and case law and shall also be understood to mean all foreseen and unforeseen external causes that the Seller is not able to exercise and that render it impossible for the Seller to fulfil its obligations. This shall include industrial action in the company operated by the Seller or by third parties. The Seller shall also have the right to invoke force majeure if the circumstances that are preventing (further) performance of the agreement occur after the Seller should have met its obligations.
3. During the period in which the force majeure situation continues, the Seller shall be able to suspend the obligations arising for it under the contract. If this period lasts more than two months, each of the parties shall be entitled to dissolve the contract without being obliged to pay the other party compensation.
4. If the User has already fulfilled some of the obligations arising for it from the contract at the time of the occurrence of the force majeure situation, or shall be able to fulfil these obligations, and independent value can be attributed to the part fulfilled or to be fulfilled, the Seller shall be entitled to issue a separate invoice for the part that has already been fulfilled or to be fulfilled respectively. The Other Party shall be obliged to pay the aforementioned invoice as if there were a separate contract.

Clause 11 Miscellaneous

1. If one or more provisions of these general terms and conditions are null and void or are voided, whether fully or in part, the other provisions of these general terms and conditions shall remain fully in effect. In this situation, the Seller and the Other Party shall enter into consultation with each other to agree on new provisions to replace the provisions that are null and void or are voided, whereby the object and essence of the original provisions shall be taken into consideration as much as possible.
2. If the Seller does not always require strict compliance with these terms and conditions, this shall not mean that the provisions of these terms and conditions are not applicable or that the User shall lose the right to require strict compliance with the provisions of these terms and conditions to an extent in other cases.

Clause 12 Disputes and applicable law

All disputes relating to the contracts that the Seller enters into shall be brought before the competent court in the court district of North Holland in Haarlem. Dutch law shall apply to all contracts entered into with the Seller, to the exclusion of the Vienna Sales Convention.