

TERMS OF DELIVERY AND PAYMENT OF HERSTACO B.V.

Article 1 – General

1. These terms of delivery and payment shall apply to all our offers, all orders placed with us and all agreements concluded with us. We expressly reject any reference by the client to other general terms (whether these are the client's own terms or those of a third party) in any stage of the agreement being concluded with us. Insofar as they conflict with the client's written purchase conditions, tender conditions or any other terms and conditions, our terms and conditions shall take preference, except if and insofar as the client's terms and conditions have expressly been accepted by us in writing.
2. In these conditions, the terms below are to be understood as follows:
 - “client”: any natural person or legal entity who buys products from us or to whom we submit quotations;
 - “we” or “us”: Herstaco BV, the company that has received an order from the client or has concluded an agreement with the latter, or the party that refers to these general terms in its offer;
 - “products”: all items that are the subject of an agreement, plus all results of the provision of services by us, such as contracting of work, assembly, installation, consultancy, welding activities, etc.

Article 2 – Offers; conclusion of agreements

1. All our offers or quotations shall remain in force for 30 days after the date of the offer or quotation, but they shall at all times be without obligation. During the two working days (not including Saturdays, Sundays or public holidays) after receipt of the client's acceptance, we may revoke the offer.
2. An agreement is concluded if and insofar as we accept client's order in writing or if we proceed to execute the order. The date of conclusion of the agreement shall be either the date on which we send written confirmation of the order or the first day on of actual work on the order.
3. Insofar as any work is carried out by us at the client's request prior to the conclusion of an agreement, we shall have the right to demand payment in respect thereof in conformity with the rates then prevailing, unless expressly agreed otherwise.
4. Verbal promises and agreements made with our employees or other subordinates are not binding on us except after and insofar as these have been confirmed in writing.

Article 3 – Prices

1. The contractual prices are in euros and are exclusive of sales tax. Unless expressly agreed otherwise in writing, our prices shall be ex storage yard, i.e. exclusive of e.g. transport and/or dispatch, packing, insurance and any duties or taxes to be levied by the authorities or other levies and charges. Any such costs are to be borne entirely by the client, unless agreed otherwise in writing.
2. If the prices of materials, resources, parts, raw materials, wages, salaries, social security contributions and governmental charges are subject to increases after the date on which the agreement comes into effect in accordance with Article 2 para 2 but prior to the completion of the order, we shall have the right to adjust our prices accordingly.

Article 4 – Time of delivery

1. The delivery times indicated by us are indicative and always without obligation; they shall not be regarded as final deadlines.
2. The time of delivery (insofar as it is expressed as a period of time) will commence on the date indicated in our written acceptance of order. If we require payment in whole or in part upon ordering, the delivery period shall commence on the date we receive that payment or part payment.

Article 5 – Force Majeure

1. We shall under no circumstances be liable for failure to meet our obligations or failure to do so in good time as a result of force majeure, or for the consequences of any such failure. In the event of force majeure, we shall be entitled either to extend the agreed delivery period by the duration of the force majeure situation, or to dissolve the agreement or such parts of it as have not yet been carried out, without owing any damages as a result. We shall inform the client as soon as possible about a force majeure situation.
2. Force majeure circumstances shall at least include war, hostilities, public disorder, rioting, hostage-taking, civil disturbance, fire, nuclear disasters or malfunctioning of nuclear plants, water damage and flooding, strikes, sit-ins, lock-outs, lack of labour or raw materials, malfunctioning of machines or equipment, disruptions in the supply of energy either at our enterprise or at the enterprises of third parties from whom we have to purchase the required materials or raw materials wholly or in part, as well as during storage or

during transport, whether or not carried out under our management, and furthermore any other causes occurring through no fault or act on our part that make it partially or entirely impossible to meet our obligations to the client or that make it unreasonable to expect us to do so, irrespective of whether these circumstances could have been envisaged at the time when the agreement was concluded.

3. In the event of force majeure, we are entitled to suspend the execution of the agreement for a maximum of 3 months without legal intervention being required. If the force majeure circumstances have continued to exist for a period of 3 months, we shall have the right to dissolve the agreement in writing in whole or in part. In such a case, the client shall not have the right to claim any damages. The right to cancel the agreement shall also exist if the work required has become completely or reasonably impossible.

Article 6 – Delivery

1. Once the products concerned have left our premises, or when we have informed the customer in writing that the products are ready for dispatch, they are then considered to have been delivered, notwithstanding the provisions of Article 8. The place of delivery shall be our storage site, or (in the case of delivery carriage paid) the place of unloading stated on the waybill. If delivery is made in instalments, the separate instalments count individually as having been delivered.
2. If materials that are ready for delivery cannot be transported to their destination due to circumstances beyond our control, we are entitled to store said materials at the client's expense and risk (and unload them if necessary) and to require payment for this; at our discretion this may be at our storage site or at a suitable location as close as possible to the unloading place as stated on the waybill.

Article 7 – Risk

1. The risk shall pass to the client at the time of delivery within the meaning of Article 6.
2. If the client does not take delivery of the products, or does not do so in good time and properly, the client shall be deemed to be in default without notice of default being required. The client shall then be liable for damages consequent to this default. We shall then have the right to store the products at the client's expense and risk or to sell them to a third party if the client does not meet its obligations in full within one week of having been reminded by us. The client shall continue to owe the purchase price plus the interest and all further costs; however, in the case where the products are sold to a third party, the net proceeds of such a sale will be deducted.

Article 8 – Retention of Title

1. We shall remain the owner of all products we have delivered until the client has fulfilled all its obligations to us with regard to the transactions in question, previous transactions and subsequent transactions. As long as the client has not done so, the products delivered by us shall be kept separate from other products and clearly identified as being our property, and they shall be insured properly and kept properly insured.
2. If the client fails to fulfil any obligation towards us pursuant to paragraph 1 of this article, or if it is reasonable to fear that the client will not fulfil the aforementioned obligations, we shall be entitled to repossess the products delivered immediately, wherever they may be, without further notice of default being required. The costs of repossession shall be charged to the client.
3. As long as the outstanding claims are not satisfied, the client shall not have the right to alienate these products or to create a possessory or non-possessory pledge on them.
4. If we cannot invoke retention of title because of disfigurement, deformation or accession of the delivered products, the client shall be obliged to pledge the newly created products to us and to take the necessary actions to do so.
5. Every payment that we receive from the client shall first be used to settle claims that we may have against the client relating to items for which retention of title as defined in paragraph 1 of this Article does not apply or no longer applies. The retention of title does not lapse if we waive any claim against the client.
6. If the items delivered are transported to a country in which retention of title as described above is not recognized, then the client shall at its own expense provide a right of pledge or security interest or equivalent rights on the good supplied, in accordance with local law.

Article 9 – Payment

1. Unless agreed otherwise in writing, payment of the purchase price is to be made at our discretion either in cash on delivery or within 30 days of delivery in accordance with the provisions of Article 6.
2. Any and all payments shall be made without any deduction or settlement; setting off or settlement shall not be allowed. If the client believes it has any claim whatsoever regarding the delivery or execution of the order, this does not release it from the obligation to pay in the manner agreed on and it shall not have the right to postpone its payment obligations.

3. If reasonable doubt arises at any moment regarding the creditworthiness of the client, we are entitled to require advance payment in part or in full of the purchase price before carrying out or continuing to carry out the work, or to require that the client provides appropriate surety such as a bank guarantee or an undisclosed pledge on the products we have supplied. In such cases, we are also entitled to make shipments on a cash-on-delivery basis only.
4. The fact that a payment term has expired is of itself sufficient for the client to be deemed legally to be in default. In that event, all claims that we may have against the client are immediately claimable in their entirety, without prejudice to our other rights. We are entitled to suspend all other deliveries until the existing payment obligations are fulfilled.
5. Without any official notice of default being required, the client shall owe interest on all amounts that are not settled by the last day of the payment term, such interest being charged from that day onwards at the then applicable statutory commercial interest rate given in Article 6.119a of the Dutch Civil Code. If the client remains in default of the amount owing plus interest after a further payment term defined in writing has also expired, the client shall be obliged to compensate us for all extrajudicial expenses; these shall comprise at least 15% of the outstanding amount owing and shall always be at least €700, excluding sales tax. In the event of any of the obligations pursuant to this agreement not being fulfilled by the client, all legal and extrajudicial costs incurred by us (including costs of legal assistance and lawyers) shall be borne in full by the client.
6. All payments shall first be used for settlement of costs, damages and interest and only thereafter for settlement of the principal sum owing.

Article 10 – Setting aside

1. In the event that client is confronted with involuntary liquidation, an official moratorium, closing down or winding up of its business, all agreements with the client shall be set aside by operation of the law, unless we inform the client within a reasonable term that we require performance of (part of) the relevant agreement or agreements, in which case we shall have the right, without any notice of default:
 - to postpone the performance of the agreements until payment has been adequately guaranteed; and/or
 - to postpone any and all payment obligations we may have towards the client for whatever reason;without any prejudice to our other rights and without us being liable for any damages.
2. If any event as set out in paragraph 1 of this article should occur, all claims we may have against the client shall be payable forthwith and in full, and we shall have the right to repossess the products in question. In such a case, we shall have the right to enter the client's sites and premises in order to take repossession of the products. The client is obliged to take the required steps in order to enable us to exercise our rights.

Article 11 – Cancellation

1. Cancellation of an order is only possible if we consent to this in writing and shall be subject to conditions that we shall define for each case, including (but not limited to) indemnification for loss of profits.
2. The client shall be obliged to indemnify us at all times against third-party claims consequent to cancellation of the order.

Article 12 – Inspection and complaints

1. We shall only supply second choice and/or used materials. Second-choice material is understood to mean: material that is delivered without the corresponding manufacturing certificate and without a (quality) guarantee. It is possible that there will be defects in this material, e.g.:
 - a. being under-sized and/or
 - b. flaws in quality and/or
 - c. being out of tolerance in terms of dimensions and/or thickness and/or
 - d. being out of tolerance in terms of mechanical or chemical parameters
 - e. or it may have other abnormalities.
2. The client is entitled to inspect the products at our site thoroughly and/or to sample them or have them sampled prior to purchasing them. After having purchased them, the client cannot make any claims on account of the deviations set out above in paragraph 12.1.
3. The inspection of weights, dimensions and quantities is at the client's expense and on its instructions. Complaints must be received by us within 8 days of the delivery date by means of a registered letter; if this is not done, the quantities, dimensions and weights as indicated on waybills, delivery vouchers, weighing certificates and the like shall be deemed to have been acknowledged as correct. Complaints can only relate to weights, dimensions and quantities.

4. At any time, and at least for a period of 14 days after receipt of the registered letter containing the complaint, the client shall enable us to inspect the defects claimed; if this is not done, the client shall lose any right of claim on account of these defects. During the period referred to above, the client shall be obliged to store the goods delivered by us separately from similar goods and they shall be clearly identifiable.
5. Claims made within the set term shall not give cause for the client to postpone its payment obligations. The client shall not be at liberty to return the products before we have given our consent in writing. We shall only be under the obligation to replace the products delivered if and insofar as the products are available within our business at that time and have not been set aside for another delivery.

Article 13 – Liability

1. Except for wilful intent or gross negligence on our part, we shall never be liable for any direct or indirect damages or losses sustained by the client, including consequential damages, non-material damages, loss of profits or environmental damages, or damage consequent to third-party liabilities.
2. If and insofar as we are held liable despite the above provisions in any given case by the competent court, our liability to the client for any reason whatsoever shall in all cases be limited for each event (whereby an interrelated series of events is to be regarded as one single event) to the relevant contract price, exclusive of sales tax.
3. The client shall be obliged to indemnify us and compensate us for any and all costs, damages and interest charges that we may incur as a direct consequence of third-party claims against us relating to occurrences, acts or omissions in or within the scope of the execution of the order for which we have no liability under these terms towards the client.
4. If Herstaco BV or third parties working on the instructions of Herstaco BV have carried out activities on the material supplied (including but not restricted to welding, sandblasting and coating), Herstaco BV shall not be liable for any damages resulting from improperly carrying out such activities. If it transpires that such processing was not carried out properly, Herstaco BV shall choose whether to:
 - carry out the processing again;
 - repair the problem. In that case, the client must return the material carriage paid to Herstaco BV;
 - give the client a credit of (at most) the amount paid to Herstaco BV for the processing in question.

Article 14 – Applicable law, competent court and jurisdiction

1. All agreements concluded with us that these conditions apply to in full or in part shall be governed by the laws of the Netherlands.
2. Any disputes arising from agreements concluded with us shall be subject to the judgement of the competent court in Middelburg (NL), without prejudice to our right to summon the client to appear before the court that has jurisdiction in the client's place of residence.

Article 15 – Explanation of the conditions

1. These conditions have been drawn up in Dutch, English, French and German. In the event of any difference in content or meaning, the Dutch text shall take precedence.
2. If any stipulation in these conditions is deemed, in the opinion of the competent judge, to be in any way invalid, to conflict with the law or to be unenforceable, then this shall have no effect on the other stipulations contained herein, i.e. the scope of the legal judgement shall be restricted to the stipulation to which it referred.