

Terms and Conditions - v1

distribugs

22-06-2018

Terms and Conditions (This document is translated by Google translate from original Dutch tekst, translation mistakes included)

Article 1. Definitions

In these general terms and conditions of sale and delivery:

Distribugs: Distribugs B.V., with its registered office in Zwolle, and all companies and companies directly or indirectly affiliated with it;

Agreement: every agreement between Distribugs and the Buyer and any change or addition thereto;

Goods: all material items that are (will) be delivered to the Customer in the performance of an Agreement;

Services: services to be provided by Distribugs to the Customer, including - but not limited to - giving advice;

Damage: all direct financial loss suffered by the Customer, with the exception of lost turnover, profit and / or other consequential loss, but including reasonable costs incurred by accountants, legal advisors and tax specialists for the determination of damage and liability;

Conditions: these general sales and delivery conditions.

Article 2. Applicability

These Terms and Conditions apply to all legal relationships between Distribugs and the Customer, including offers and Agreements.

By accepting an offer made by Distribugs, the Buyer also accepts the applicability of these Terms and Conditions.

Applicability of general terms and conditions of the Customer is expressly rejected by Distribugs.

Deviations from and / or additions to these Terms and Conditions only apply if and insofar as these have been expressly accepted in writing by an authorized representative of Distribugs. An agreed deviation or supplement only relates to the delivery for which it has been agreed.

Article 3. Offer, acceptance and orders

All offers and quotations made in any way by or on behalf of Distribugs are without obligation, unless they contain a term for acceptance. Also offers mentioned in leaflets, price lists etc. are without obligation. If a non-binding offer is accepted by the Purchaser, Distribugs has the right to revoke the offer.

Offers and commitments of intermediaries, representatives and / or employees engaged by Distribugs are only binding if they have been confirmed in writing by Distribugs.

Distribugs is completely free to accept or not accept orders from a Buyer.

Agreements are concluded at the moment that (1) Distribugs confirms an offer or order of the Customer in writing; (2) at the moment that Distribugs starts to execute the Agreement; or (3) at the moment that Distribugs sends an invoice to the Customer for the relevant Agreement.

Orders accepted by Distribugs are deemed to be determinative by type and brand only. If a packaging, design, model, type, etc. has been changed, then Distribugs has been discharged by delivery of the modified packaging, execution, model, type etc. at the applicable standard price.

Article 4. Delivery, transfer of risk, inspection and advertising

Unless otherwise agreed in writing, delivery will take place at Distribugs distribution center. The Goods to be delivered are at the expense and risk of the Buyer from the moment of leaving the distribution center.

If and insofar as Distribugs takes care of the transport of the Goods, this does not affect the provisions of paragraph 1 of this article. The mode of transport is determined by Distribugs. The Buyer is obliged to receive the Goods at the agreed location of delivery and to immediately discharge them.

If Distribugs, whether or not on behalf of the Customer, arranges the transport of the Goods, Distribugs is free to choose the packaging, the transporter and the route to be followed. If Distribugs also takes care of transport insurance, this does not affect the provisions of paragraph 1 and the Customer will insure the Goods additionally if required.

From the moment that the Goods are at the expense and risk of the Buyer, the Customer shall ensure adequate insurance of the Goods against all possible risks, such as - but not limited to - loss, theft, damage and / or the destruction of the goods.

Distribugs has the right to deliver in parts, in which case that which has been agreed between the parties regarding such sales is applicable to each delivery separately. Distribugs is entitled to invoice the relevant partial delivery pro rata.

If the date of actual delivery is postponed at the request or by the Buyer, the Purchaser requests deliveries in parts and / or Goods are not collected, then the risk for the Goods nevertheless transfers to the Customer with effect from the moment that these Goods are the administration and / or storage space of Distribugs as 'goods of the Buyer' have been identified. Distribugs is then entitled to invoice the Goods to the Buyer. Any costs of extra transport, storage, insurance and / or other extra costs are at the expense of the Customer.

On delivery, the customer must examine whether the goods comply with the Agreement (correct product, correct

quality, correct quantity, correct expiration date, absence of damage, etc.). If the goods do not comply with the Agreement, the Customer can no longer appeal to them if they fail to deliver Distribugs in the event of visible defects within 2 working days after delivery, and in case of invisible defects within 2 days after discovery at least at the latest within 7 days of delivery, in writing and motivated. has given knowledge. In addition, the Customer's right to complain will lapse if he does not cooperate sufficiently with Distribug's investigation into the merits of the submitted complaint. The Customer will give Distribugs the opportunity to view the goods.

Changes to technical insights in the industry and / or government regulations are at the risk of the Customer. Minor or technically unavoidable deviations in quality, quantity, dimensions, color, size, etc. are no grounds for advertising. The same applies to color differences as a result of light and / or weather influences.

Return shipments are only accepted after prior written approval from Distribugs. The costs and risks associated with return shipments are at the risk of the Customer.

Distribugs is not obliged to take back Goods picked up on a sample or in the Distribugs branch. The right of complaint also expires if the Customer has not fulfilled its obligations or if the Goods have been taken into use, processed and / or processed.

If the delivered goods are defective and all the aforementioned procedural requirements are observed, Distribugs will either repair the defective item or have it repaired, or replace it with a non-defective product, or credit the amount corresponding to the complaint to the Customer, entirely at the discretion of the Customer. Distribugs. Distribugs is not liable for any damage suffered by the Purchaser in respect of faulty products.

Article 5. Services

If Distribugs provides Services to the Customer, Distribugs will endeavor to provide these Services as well as possible. The Customer agrees that Distribugs may engage one or more third parties for the performance of Services. For shortcomings of third parties, who do not work in the employment of Distribugs, Distribugs is not liable, except for intent or gross negligence on the part of Distribugs. The authority to engage third parties also includes the authority to agree on behalf of the Purchaser to a limitation of liability by the third parties in question.

Article 6. Delivery periods

Specified or agreed delivery periods can never be regarded as a deadline. In the event of non-timely delivery, Distribugs will only be in default after a written notice of default, in which case a further and reasonable delivery term is set which is at least equal to 30 days, while the Customer is obliged to continue to take delivery.

Should default occur after notice of default, Distribugs will enter into consultation with the Buyer about compliance or dissolution of the agreement. The customer can only claim compensation for damage if this has been agreed in writing in advance. Any damage to be compensated by Distribugs will never be greater than that part of the invoice amount, which relates to the Goods not delivered, not delivered on time, not correctly or not completely.

Article 7. Prices, payment and settlement

The Goods and / or Services delivered to the Customer are calculated at the prices of Distribugs for the relevant Goods and / or Services in force on the day of Delivery, even if an explicitly agreed price has been agreed. If the price charged is more than 10% higher than the initially agreed price, then the Customer has the right to dissolve the Agreement in writing immediately after the Customer has been informed of the price increase. Thereafter the right to dissolution expires. The Buyer is not entitled to dissolve the agreement on this ground if the price increase is the result of government measures or freight rates.

All prices are exclusive of VAT, packaging and / or packaging costs, disposal charges and any other taxes and levies due by the government as applicable at the time of the Delivery, unless expressly stated otherwise. Unless otherwise agreed, transport, shipping and / or postage costs and costs relating to the insurance of the Goods are at the expense of the Buyer.

The customer is obliged to pay Distribugs the costs of packaging. The packaging is credited to the Customer by Distribugs under the condition that the Customer (1) returns it to Distribugs by its own vehicle (2) within 1 year after delivery thereof, (3) this packaging has been invoiced and paid to the Buyer, and (4) this the Customer has sorted by brand and content.

Payment to Distribugs must be made within 5 days of the invoice date in a manner to be indicated by Distribugs. Delivery will only take place after full payment has been received, unless the parties have agreed otherwise in writing.

The payment is effected effectively in the invoiced currency and without settlement, discount or suspension. Distribugs is authorized to settle amounts that it has at any time from the Buyer, to settle amounts that Distribugs or a company associated with it owes or will owe the Buyer.

If payment does not take place within 5 days after the invoice date, at least within the agreed payment term, the Buyer will be in default by operation of law without further notice of default. In the event of default, all payment obligations of the Buyer will be immediately due and the Customer is obliged to pay Distribugs a default interest on amounts owed equal to the statutory commercial interest pursuant to article 6: 119a of the Netherlands Civil Code plus two (2) percentage points. In addition, the Buyer owes Distribugs a credit limitation surcharge equal to 3% of the outstanding invoice amount.

If there is good reason to fear that the Purchaser will not comply strictly with its obligations, all claims of Distribugs

against the Purchaser will be immediately due and payable and the Purchaser is obliged to provide security at the first request of Distribugs and in the form desired by Distribugs and, if necessary, to provide such security. supplement for the fulfillment of all its obligations. As long as the Customer has not complied with this, Distribugs is entitled to suspend fulfillment of its obligations.

If the Purchaser does not fulfill his payment obligations (on time), all collection costs (both judicial and extrajudicial) are at the expense of the Purchaser. The extrajudicial collection costs are calculated in accordance with the Voorwerk II Report, with a minimum of € 1,500.

The Buyer can only object in writing to an invoice within 8 days of the invoice date. After the expiry of this period, the Buyer is deemed to have agreed to the relevant invoice.

Payments by or on behalf of the Customer successively serve to settle the extrajudicial collection costs owed by the Customer, the legal costs, the interest owed and then in order of age of the outstanding principal sum, irrespective of the contrary indication of the Customer.

Article 8. Retention of title

Distribugs reserves the ownership of the Goods until they are fully satisfied:

the services owed by the Purchaser for all Goods and / or Services delivered or to be delivered by Distribugs; and all receivables from Distribugs on the Buyer due to the Customer's failure to fulfill its obligations.

If the retention of title is invoked, the Buyer is not entitled to reimbursement of the storage costs, nor can it rely on a right of retention in this respect.

If the Purchaser is in default with regard to the obligations referred to in Article 7, or if Distribugs in its opinion has good grounds to fear that the Purchaser will not comply with its obligations, Distribugs is entitled to recover the goods that belong to it. from where they are located. The Customer hereby grants Distribugs an irrevocable authorization in that case to (have) enter the spaces in use at or for the Buyer. In the event that the Purchaser does not comply with the provisions of this subsection at the first request, the Purchaser shall forfeit to Distribugs an immediately due and payable penalty equal to 10% of the amount still owed by the Purchaser to Distribugs per day. The Buyer is entitled to resell or use the Goods delivered subject to retention of title, if and insofar as necessary, exclusively in the context of the normal conduct of his business. In the event of a sale, the Buyer is obliged to deliver these Goods also and only subject to this retention of title and in accordance with the provisions of this article. An exception applies to the situation in which the Purchaser is in bankruptcy or suspension of payment, in which case resale is not permitted in the normal course of business. The Buyer is not authorized to pledge the Goods delivered under retention of title to third parties or as security in the broadest sense of the word to third parties and / or to establish any limited right thereon.

The Buyer is obliged to keep the goods delivered subject to retention of title carefully and as identifiable property of Distribugs and to insure them adequately against all business and other risks (including - but not limited to - fire, theft, water damage, explosion, etc.). At Distribugs' first request, the Buyer will provide copies of Distribugs with the applicable insurance policies, including proof of timely premium payment.

On delivered Goods that have been transferred into the Buyer's ownership by payment, or that have been processed, and are still in the hands of the Buyer, the Customer hereby establishes a pledge on behalf of Distribugs as security for the fulfillment of claims, other than those referred to in paragraph 1 of this article (including - but not limited to - future claims) which Distribugs may have or acquire on the Customer. At the first request of Distribugs, the Customer will hand over the Goods, which fall under this right of pledge, to Distribugs in order to realize a fist.

Paragraph 3 of this article applies accordingly.

The customer is furthermore obliged to, on first request from Distribugs:

To pledge to the Distribugs any claims of the Customer on insurers regarding the Goods referred to in this article; and / or

To pledge to the Distribugs any claims of the Customer on its debtors concerning the Goods referred to in this article; and / or

To cooperate in any other way with all reasonable measures that Distribugs wishes to take to protect its interests and / or property rights, provided that the measures to be taken do not disproportionately interfere with the Client's business operations.

Article 9. Warranty

Distribugs does not provide any other or more extensive warranty on Goods than the warranty of its suppliers and / or manufacturers for the relevant Good.

If a supplier and / or producer generally do not provide a guarantee for a Good, then Distribugs guarantees that the Good in question has the properties that can be expected of it for a period after purchase, which is reasonable for such products. This period will in no case exceed 6 months. The guarantee applies only in normal use, in accordance with the applicable regulations for the relevant Good. In case the Good proves to be defective within this warranty period, the Customer will return it to Distribugs. Distribugs is responsible for repair or replacement of the defective Good. More than that, Distribugs is not kept. Under no circumstances is Distribugs liable for payment of any compensation due to the possible defectiveness of Goods during the warranty period.

Performing repair and / or alteration work on a Good without the written permission of Distribugs will void any warranty. The same applies if Goods are not treated and / or cleaned as prescribed.

When reselling Goods, the Purchaser will not provide any third-party guarantee to third parties than those stated in this article.

No guarantee is provided on Services. No guarantee is given on natural products in so far as the goods are inherent to the natural product in question. For wood this concerns, for example, small cracks, crevices and cracks, resin cores, brushes, small and / or usual color differences and deviating veins.

Article 10. Placement / assembly

If it has been agreed that Distribugs takes care of the placement / assembly of Goods, then all other activities (including - but not limited to - chopping, breaking, masonry, concrete, plaster, plumbing, electricity, gas -, painting, central heating, scaffolding and carpentry) at the expense and risk of the Customer. The same applies to any fasteners, set rules and other provisions that are necessary for assembly / installation and that are not expressly included in the accepted offer. The Customer also ensures timely request and payment of the required permits. Unless otherwise agreed in writing, the agreed price for placement / assembly only takes into account work and delivery during normal working hours, uninterrupted, under normal circumstances, in the presence of the Customer, in a place that is easily accessible, safe and well accessible to all edges through paved and paved access roads. If all these conditions are not met, or if there are other special circumstances that make delivery or assembly / installation extra time, any additional costs will be charged to the Customer. Under special circumstances is also understood the situation, in which can not be delivered because the Customer can not fulfill his obligation to take off against cash payment (if agreed) or other reasons why can not actually be delivered, such as absence of the Buyer or his representative .

The customer shall arrange for a lockable dry storage place for tools, goods and materials at his own expense. In addition, the Customer will provide suitable housing, adequate power supplies (220 / 380V) at the workplace, as well as water and light and any other statutory required facilities.

The Purchaser shall ensure for its own account and risk that:

the fitting / mounting staff can do their work under normal circumstances, at the moment they want to start with them, unobstructed by obstacles, and can continue uninterrupted according to the assembly sequence they have determined;

the placement / assembly staff can carry out work during normal working hours, or - if this has been agreed in writing at the request of the Customer - outside normal working hours; and

the construction site meets all safety requirements and all necessary precautions have been taken. If the Customer remains in default, all additional costs (including extra travel and accommodation costs) and damage to Distribugs will be at the Buyer's expense. This explicitly includes the situation that the assembly team can not carry out a planned subsequent assembly due to the delay that has occurred at the Customer.

The customer will be present at the place of installation / installation at the moment of completion of the work and will immediately check whether the work has been carried out properly. Complaints after departure of the placement / assembly employee (s) will not be taken into consideration, unless the Customer demonstrates that he could not reasonably have discovered the defect in question at the time the work was completed.

Placement, assembly and / or installation costs must be paid in advance. If these costs can not be determined in advance, then the Purchaser is obliged to pay an advance payment to be paid in advance by Distribugs.

Article 11. Liability, force majeure and liberation

In case of defective Goods delivered, the liability of Distribugs is limited to fulfillment of the Guarantee as included under Article 9 of these Terms and Conditions.

In all other cases (including the situation that Distribugs Services provided and / or Distribugs will not fulfill its warranty obligations for whatever reason) Distribugs' liability is limited to compensation for Damage caused by intent or gross negligence on the part of its employees. due. Distribugs is not liable for other damages, in any form or of any kind whatsoever.

Distribugs is not liable for damage, which arises in connection with notifications, explanations or advice in the broadest sense of the word provided by Distribugs (or by intermediaries, representatives and employees), such as (but not limited to) with regard to loading, unloading, transport, storage, storage, use, composition and / or suitability of goods delivered to Buyer by it or third parties.

In no case shall Distribugs be obliged to pay a higher amount than it can recover from its insurers in respect of the damage for which it is held liable, to be increased by its own risk under that insurance. If insurers do not pay out or the damage is not covered by an insurance, the liability of Distribugs is limited to Damage up to a maximum of the net invoice value of the relevant delivery / Service, but in any case up to a maximum of € 10,000, -.

Distribugs stipulates all legal and contractual defenses which it can invoke to defend its own liability towards the Customer, also for the benefit of its subordinates, the non-subordinates for whose behavior Distribugs is liable under the law and the suppliers of Distribugs.

Any liability of Distribugs towards the Buyer expires after the expiry of 3 years after (1) the Goods have been delivered to the Buyer; and / or (2) the Services for the Buyer have been completed.

Distribugs is not liable for delay, non-delivery or incorrect delivery as a direct or indirect consequence of force majeure. Force majeure includes any circumstance beyond the will and actions of Distribugs, which prevents the normal execution of the contract or makes it difficult to reasonably suspect that Distribugs can not be required, such

as strike, illness and / or excessive absenteeism, lack to persons, raw materials and / or materials, government measures including import and export measures, shortcomings on the part of third parties engaged by Distribugs (including suppliers), defects in and / or damage to production resources, transport impediments and / or disruptions in traffic , etc. Distribugs can also invoke force majeure if the circumstance that caused the force majeure occurred after Distribugs had to deliver.

Without prejudice to the further rights of the parties, force majeure gives both parties the power to dissolve the agreement for the part not yet executed after the force majeure situation has lasted for one month, without the parties having been held to any degree of compensation. Article 4 paragraph 5 of these Terms and Conditions applies mutatis mutandis.

Article 12. Intellectual property

All documents, sales folders, images, drawings, quotations, specifications, designs, etc, which are provided to the Customer by Distribugs remain the property of Distribugs. The Buyer is not entitled to use it for any purpose other than that for which it was made available to the Buyer.

The Purchaser is not entitled to disclose the documents referred to in the previous paragraph or the data contained therein or otherwise known to the Purchaser to third parties, to provide access thereto and will return these documents immediately at the first request of Distribugs, without having to provide copies thereof. to hold.

In the event of unauthorized use of the documents - including express drawings, specifications, quotations, designs, etc. - the Customer is obliged to compensate Distribugs for all damage that it suffers, including - but not limited to - lost turnover / profit and the costs involved in drafting the relevant designs, if these have been made exclusively for the Buyer.

Article 13. Dissolution

If the Customer does not, not properly or in time, comply with any obligation that may arise from the agreement, as well as in the event of bankruptcy, suspension of payment, receivership, cessation or liquidation of the Customer's company, Distribugs at its discretion, without any obligation to pay damages and without prejudice to its further rights, to dissolve the agreement in whole or in part, or to suspend the further execution of the agreement. In addition, all receivables from Distribugs against the Buyer become immediately due and payable in those cases. In the event of dissolution, the Customer is obliged to compensate Distribugs for the damage it suffers as a result, which damage is at least equal to the amount of installments already paid on the relevant Agreement.

Article 14. Conversion, explanation and change of address

If and insofar as on the basis of reasonableness and fairness or the unreasonably onerous nature of any provision in these Conditions can not be invoked, then that provision in terms of content and scope as much as possible corresponding meaning, so that it can be appealed to. done.

The invalidity or otherwise unenforceability of any provision of these Terms and Conditions does not affect the validity of the other provisions of these Terms and Conditions.

If Distribugs at any time does not require strict compliance with one of these Conditions, this does not mean that Distribugs waives the right to demand strict compliance at any time.

The Buyer is obliged to immediately notify Distribugs in writing of address changes. Goods delivered to the address of the Customer last known to Distribugs are deemed to have been received by the Buyer.

Article 15. Applicable law and competent court

Dutch law applies to all legal relationships between Distribugs and the Buyer. The applicability of the Vienna Sales Convention is explicitly excluded.

The court in Zutphen is also authorized to take cognizance of any disputes between Distribugs and the Customer.

Article 16. Deposit

These general terms and conditions have been filed with the Chamber of Commerce Zwolle, and will be sent free of charge at the first request of the Buyer.