

General Terms and Conditions - Allgemeine Geschäftsbedingungen - Algemene Voorwaarden - Conditions générales

of Henssgen International B.V.

26.11.1998

revision status: 21.08.2017

1. Contract

The terms and conditions apply to advice, quotes, confirmations and deliveries of Henssgen International B.V. (hereafter called Henssgen). Terms and Conditions that differ from those specified are only effective if expressly approved.

2. Tenders

All tenders, unless expressly stated otherwise in the tender, are non-binding and can be revoked by Henssgen subsequent to their acceptance by the customer. The tenders are based on the information, drawings, etc. submitted by the customer in the event of an inquiry. Henssgen proceeds on the assumption of the correctness thereof. All tenders are based on execution under normal circumstances during working hours normal for Henssgen. The content of folders, printed material, etc. are not binding upon Henssgen unless indication thereto is expressly made by agreement.

3. Commitment

Henssgen shall be committed only the eventual fulfilment of the agreement subsequent to having accepted it. This express acceptance needs to be shown by means of written agreement by Henssgen or through the initiation of execution by Henssgen within ten days as of its acceptance of the relevant order. Arrangements or agreements with subordinate employees of Henssgen are not binding insofar as they are not affirmed in writing. To be regarded as subordinate persons in this respect are all employees not enjoying power attorney.

4. Prices

Price indications in the price lists and quotes are free of engagement. Set prices are binding, provided the price list or quote indicated a time frame. The prices are list prices. Net prices are marked accordingly. Prices are ex-works factory in Dinxperlo (the Netherlands), prices that differ are stated.

All prices exclude VAT.

The transport packaging, which we reserve the right to choose, is included in the price. Should the delivery be delayed due to client action, we are authorised to charge any additional costs incurred. For special services, unusual tasks which are particularly time-consuming or require particular exertion, Henssgen can charge an extra compensation which is to be determined in fairness.

5. Delivery and risk

Delivery is done ex-factory from the warehouse, as the case may be, in consultation with the customer. The delivery period becomes effective at the moment that all factors necessary for carrying out the agreement are in the possession of Henssgen.

The delivery period is set in the expectation that Henssgen can continue working as planned at the time of the tender and that the necessary goods will be delivered to Henssgen punctually. The exceeding of deadlines can be in principle only provide grounds for damage compensation if this has been agreed in writing. Henssgen is in all other cases only liable for compensation damages due non-punctual delivery if the customer has given Henssgen notification of default in writing, whereby the customer must grant Henssgen a term of at least half the original agreed delivery period to still be able to fulfil its obligation. Whenever subsequent to exceeding of the deadline the goods have not been purchased by the customer or have not been able to be delivered by Henssgen, the goods shall be at the disposal of the customer, and they will be warehoused at his cost and risk.

For ex-factory deliveries, the goods will be transported at the risk of the customer. Also, in the event that Henssgen takes care of the transport, the customer is responsible for all damaged related to freightage. The customer should insure himself adequately against this risk.

Should an appeal for the provisions not hold good, Henssgen shall never be liable for any damage above the amount that Henssgen can get from the freighter and/or its insurer in connection with that which was lost or the damages during transport, and shall, at the request of the customer, cede its claims vis-à-vis the freighter or insurance company of the customer.

In the event of the transport of goods at the cost and risk of the customer, Henssgen is not accountable for damages and/or deficiencies that can be ascertained upon arrival of the goods, and delivery notes not destined for direct return are to be signed. After delivery an acceptance of the goods, the risk as regards damages and that which was lost, as well as any related consequential damages, devolves to the customer.

Should there be no other details available, we will determine the manner of shipping. The shipment address is the place where the delivery is to be shipped.

Delivery times are only binding if they have been expressly confirmed by us. In the case of a force majeure event in production, logistics or administration, the delivery terms and conditions will be renegotiated.

6. Right of retention

In cases in which Henssgen has goods of the customer in its possession, Henssgen is entitled to keep the goods in its possession until fulfilment of the costs connected with its extended task(s) or until fulfilment or other obligations emanating from the legal relationship existing between Henssgen and the customer. Henssgen shall not exercise its entitlement to right of retention if the customer has provided sufficient security for the benefit of the costs and obligations relevant to this article.

7. Reservation of ownership

So long as the customer has not fulfilled in full its obligations vis-à-vis Henssgen, the delivered goods shall remain property of Henssgen, and the customer shall bear from the moment of delivery the risk of loss or of damage to the delivered goods, no matter what the cause. In the event that the goods delivered by Henssgen have in the meantime been processed or worked on by the customer, the newly existing ware will be considered as having been made by order of Henssgen. This holds as well so long as the customer has not fulfilled all of his obligations vis-à-vis Henssgen. Without the knowledge and consent of Henssgen, the customer has no authority prior to payment to pledge the goods to third parties or to transfer ownership, and Henssgen remains the owner thereof until the customer has settled its obligations of payment in full in vis-à-vis Henssgen. In the event that the customer fails to meet some of the provisions of the agreement with regard to purchased goods vis-à-vis Henssgen, the latter is entitled, without proof of default, to take back the goods, those originally delivered as well as those newly formed. The customer gives Henssgen the authority to enter the areas where the goods are found. Henssgen shall issue over to the customer, at the moment that the customer has fulfilled all of his payments obligations in this and related agreements, and ownership of the delivered goods in pledge of Henssgen, for benefit of other claims Henssgen has on the customer. The customer shall at the first request of Henssgen grant Henssgen its cooperation in action demanded in that framework.

8. Liability and Compensation

We do not pay compensation. Liability in accordance with product liability laws will not be affected. Henssgen is only responsible for damage to goods of the customer placed at the disposal of Henssgen in the framework of the agreement. Henssgen is not responsible for this damage whenever it is the result of extraordinary circumstances against whose damaging consequences Henssgen does not have taken any suitable measures in connection with the nature of the activities and the normal customs in trade, and for which it would be unreasonable to have damages fall to the account of Henssgen.

Henssgen is not responsible for damage to other goods and properties of the customer insofar as it cannot be blamed on gross negligence on the part of Henssgen in execution of the order. Responsibility for gross negligence, however, is limited to damages against which Henssgen is insured or are reasonably seen to have warranted insuring as customary practice in the trade. The above statement means, among other things, that not coming into consideration for compensation is eventual consequential or company damage, including damage to the income of the customer, against the risks of which the customer needs to insure himself when necessary,

while, moreover, the damage to be compensated for by Henssgen needs to be moderate, in that the damage stands in no relationship to the price to be paid by the customer

9. Act of God

In the event of execution of the agreement is hindered by an act of God, the customer obligates himself to grant Henssgen a reasonable term in which Henssgen, in consultation with the customer, shall strive to adapt the agreement to the changed circumstances such that execution of the agreement will again be possible.

Understood by act of God is any circumstances independent of the will of Henssgen which permanently or temporarily prevents fulfilment of the agreement, as well as war, the danger of war, civil war, uprisings and strikes as well as the situation that execution of the agreement becomes impossible because the goods to be delivered are destroyed or lost without this being able to be attributed to Henssgen.

In the event that Henssgen and the customer are not able to reach agreement on this subject, and in the event that the execution thereof is thereby rendered permanently impossible, both parties are entitled to dissolve the agreement in part or in full.

Henssgen is accountable solely for damage to the goods to be delivered, unless this damage is the result of extraordinary circumstances against the damaging consequences of which Henssgen has not had to take any suitable measures in connection with the normal customs in the trade, and for which it would be unreasonable to have damages fall to the account of Henssgen.

The above statement means, among other things, that not coming into consideration for compensation is eventual consequential or company damage, including damage to the income of the customer, against the risks of which the customer needs to insure himself when necessary, while, moreover, the damage to be compensated for by Henssgen needs to be moderated, in that the damage stands in no relationship to the price to be paid by the customer.

10. Patent rights

Samples, models and tools remain the property of Henssgen. Prior permission is needed for private or third-party use.

11. Technical details

We reserve the right to adjust sizes and load values. Breakage and load details are indicative taken from identical parts from different series.

12. Payment

The general payment period is thirty days after date of invoice without deduction. Non-standard payment periods are noted on the quote, confirmation and invoice. In the event that payment is not done punctually, the customers is deemed legally in arrears and any discounts to which he is entitled shall expire.

In the event that the customer is not punctual in payment, Henssgen is entitled to proceed the call in the debt, subject to having given the customer a warning notice in writing to the effect that he has to pay and said that the payment was not done. In the event of that Henssgen proceeds to call in the debt, the extrajudicial costs or costs for the credit-insurances and collection costs and related thereof are the costs of the customer.

In the event of failed or unpunctual payment by the customer and in the event that the financial situation of the customer gives indication thereof in the sole judgement of Henssgen, Henssgen is entitled to defer the further execution of the agreement(s) until assurance has been presented by the customer regarding reliable payment thereof to the satisfaction of Henssgen and this assurances has been received by Henssgen.

13. Claims or complaints

The customer can no longer claim defective performance if within 8 days subsequent to discovery of the defect, or within which reasonable time he should have discovered the defect, he has protested to Henssgen in written form concerning the matter. Complaints regarding the invoice, as well, must be submitted in writing within 8 days subsequent to receipt of the invoice. The customer shall forfeit all rights and authorities to which he was entitled because of defects should he not have entered a complaint within the above stated period of time and if he has not offered Henssgen the opportunity to alleviate the shortcoming.

14. Rescission

Dissolution of the agreement in part or in full is to ensue by means of a written statement by the party entitled thereto. Before the customer directs a written statement of rescission to Henssgen, he shall at all times first of all place Henssgen in default in writing and grant the latter a reasonable term to still fulfil its obligations or to repair shortcomings, such shortcomings as must be stated in detail by the customer.

The customer is not entitled to rescind the agreement in part or in full or to defer his duties if he himself was already in default in fulfilling his duties.

In the event that Henssgen consents to rescission, without it being in matter of default on its part, Henssgen shall always be entitled to reimbursement of all capital damages as well as costs, spoiled profits and reasonable costs for the determination of damages and responsibility. In the event of partial rescission, the customer can raise no claim towards undoing services already done by Henssgen, and Henssgen has the unimpaired right of payment for services it has already done.

15. Withdrawal

A withdrawal by Henssgen of properly ordered, delivered and error-free goods will be only accepted upon consultation. A legal claim on the customer's withdrawal does not exist. Handling costs and freight costs are charged to the customer

16. Applicable law and legal venue

The competent court is the court where our company has its registered office. The applicable law for all agreements is the law of the Netherlands. All disputes emanating from tenders and other agreements, no matter what they are called, shall be subjected to the verdict of the competent judge within the district of Arnhem, unless legal stipulations are otherwise in opposition thereto.

17. Others

To the extent that any clauses of these terms and conditions should prove invalid, the remaining terms and conditions shall remain valid.

Henssgen International B.V.