

General terms and conditions for delivery to non-consumers

Of:

Prenimal Holland BV

Celsiusstraat 24

1704 RW Heerhugowaard (hereinafter to be referred to as: user)

Article 1 Definitions

1. In the present general terms and conditions, the following terms are used in the sense given below, unless explicitly indicated otherwise.
 - User: the user of the general terms and conditions;
 - Buyer: the user's opposite party, acting in the course of a business or in the course of a profession;
 - Agreement: the agreement between the user and buyer.

Article 2 General

1. The stipulations of the present terms and conditions shall apply to each and every offer and agreement between user and a buyer, to which user has declared the present terms and conditions applicable, insofar as parties have not explicitly deviated from the present terms and conditions in writing.
2. The present terms and conditions shall also apply to all agreements with user, the execution of which calls for the services of third parties.
3. The buyer's general terms and conditions shall only apply if parties have explicitly agreed in writing that said general terms and conditions shall apply to the present agreement with the exclusion of the present general terms and conditions.
In case of possible conflicting stipulations in the user's and buyer's general terms, stipulations in the present terms and conditions shall apply to the agreement, unless parties have explicitly agreed in writing that the buyer's general terms and conditions shall apply to the agreement.
4. If one or more stipulations in the present general terms and conditions should be null and void or declared null and void, then the other stipulations of the present general terms and conditions shall remain fully applicable. The case ensuing, user and buyer shall enter into negotiations to agree upon new stipulations replacing the null and void conditions, or, as the case may be, the conditions declared null and void, whereby the purpose and the meaning of the original conditions shall be heeded as far as possible.

Article 3 Offers and Tenders

1. All offers shall be free of obligation, unless explicitly stated otherwise.
2. The offers made by user shall be free of obligation; they shall be valid for a period of thirty days, unless indicated otherwise. User shall only be bound by the offers if the acceptance thereof is confirmed in writing by the buyer within thirty days. User shall not be bound by offers applying to goods that were sold out after the date of offer.
3. Terms of delivery given in user's offers shall only be tentative and exceeding these terms of delivery shall not entitle buyer to dissolution or damages, unless explicitly agreed upon otherwise.
4. The prices given in above-mentioned offers and tenders shall be exclusive of VAT and other government levies, as well as of shipment costs and possible packaging and administration costs, unless explicitly stated otherwise.
5. If the acceptance deviates (on secondary items) from the offer given, user shall not be bound by it. The agreement shall in such event not be concluded in accordance with said deviating acceptance, unless user indicates otherwise.
6. A compound quotation shall not oblige user to execute part of the assignment against a corresponding part of the given quotation.
7. Offers and tenders shall not apply automatically to repeat orders.
8. Buyer shall enable the user to confirm buyer's qualification as a veterinarian, a pharmacist or a registered wholesaler in veterinary products. User reserves the right to refuse delivery if the buyer is unwilling or unable to provide adequate proof of his qualification to trade or administer the products concerned.
9. The mere circumstance of previous delivery does not oblige the user to future delivery, nor does it lead to a permanent relationship, unless explicitly stated otherwise. Whenever user decides to refuse delivery, the reasons for doing so will be given to the buyer upon written request.

Article 4 Execution of the Agreement

1. User shall execute the agreement to the best of his knowledge and ability.
2. If and in so far required for the proper execution of the agreement, user shall have the right to have certain work done by third parties.

3. The buyer shall see to it that user shall be provided in due time with all data which user has said to be necessary or which the buyer must in all reasonableness understand to be necessary to the execution of the agreement. If user has not been provided in due time with the data necessary to the execution of the agreement, user shall have the right to suspend the execution of the agreement and/or to charge the buyer for the additional costs resulting from the delay at the generally accepted rate. If buyer fails to answer appropriately within 10 days upon user's written request, user is entitled to declare the agreement null and void, meanwhile reserving the right to charge the buyer for all costs resulting from the intended agreement.
4. User shall not be liable for damage of whatever nature caused by the fact that user worked on the basis of incorrect and/or incomplete data provided by the buyer, unless user should have been aware of said incorrectness or incompleteness.
5. If parties have agreed that the agreement will be executed in stages, user can suspend the execution of the parts belonging to a following stage until the buyer has approved in writing the results of the stage prior to it.
6. If user or third parties engaged by user within the scope of the assignment do work at buyer's site or at a site designated by buyer, buyer shall provide the employees having to work there free of charge with all facilities desired in all reasonableness by said employees.
7. Buyer shall safeguard user against possible claims filed by third parties who may sustain damage attributable to buyer in connection with the execution of the agreement.
8. Buyer accepts full responsibility regarding trade and administration of the products that were bought from user, as well as regarding compliance with applicable local legislation

Article 5 Delivery

1. Delivery shall be made FCA Heerhugowaard, The Netherlands.
2. If delivery is made on the basis of the "Incoterms", the "Incoterms" valid at the moment the agreement is concluded shall apply.
3. Buyer shall be held to take delivery of the goods the moment that user delivers them to him or has them delivered, or the moment at which the goods are put at buyers' disposal under the agreement.
4. If the buyer refuses to take delivery or fails to give the information or instructions necessary to the delivery, user shall be entitled to store the goods at buyer's risk and expense.
5. If the goods are services, user shall be entitled to charge possible service charges. Said service charges shall then be invoiced separately, Service, transport and packaging will always be charged for deliveries up to a certain value (to be determined periodically by user), unless explicitly agreed otherwise.
6. If, in the framework of the execution of the agreement, user requires data to be given by the buyer, the term of delivery shall commence after the buyer has provided user with said data.
7. If user has given a term of delivery, it shall only be indicative. A given term of delivery shall therefore never constitute a term to be observed on penalty of forfeiture of rights. If a term is exceeded, the buyer must give user notice of default in writing.
8. User shall be entitled to deliver the goods in parts, unless such is deviated from in writing in the agreement or if the partial delivery does not represent an independent value. User shall be entitled to invoice the thus delivered goods separately.
9. If execution of the agreement in stages has been agreed upon, user can suspend the execution of the parts belonging to a following stage until the buyer has approved in writing the result of the stage prior to it.

Article 6 Samples and Models

1. If a sample or model has been given to buyer, then the assumption is that such has been given by way of indication only, unless parties agree explicitly that the product to be delivered shall correspond with it.

Article 7 Inspection and Complaints

1. Buyer shall be held to examine the delivered goods (to have the delivered goods inspected) the moment of delivery (handing over), but in any case, in as short a period of time as possible. In this respect, buyer must examine whether the quality and the quantity of the delivered goods comply with what was agreed upon, or at least whether they meet the requirements applying to said goods in normal (business) transactions.
2. Possible visible shortcomings must be communicated in writing to user by return or no later than three days following delivery. Non-visible shortcomings must be reported in writing within three working days following their detection yet no later than the product's expiry date. Buyer has no right to file complaints about goods not being part of user's standard product range and thus being bought or stored by buyer's special request, for the purpose of delivery to buyer.
3. If in accordance with the previous paragraph, buyer files his complaint in due time, he shall still be held to take delivery and effect payment of the goods purchased. If buyer wishes to return defect goods, he shall do so following prior consent in writing from user. If buyer wishes to return goods that require special transport- or storage conditions (cold storage), reimbursement will only take place if buyer notifies user by telephone within 24 hours after receipt. User will only reimburse if transport has taken place according to his instructions and conform the conditions required, such to user's judgement.

Article 8 Remuneration, Price and Costs

1. If user and buyer have agreed upon an administered price, user shall nevertheless be entitled to increase said price.
2. User shall be allowed among others, to charge on price increases if changes in price have occurred between the moment the offer was made and the moment of execution of the agreement with respect to, e.g., exchange rates, salaries and wages, raw material, semi-finished products of packaging material.
3. The prices given by user shall be exclusive of VAT and other government levies, as well as of the other expenses to be possibly made within the scope of the agreement, including shipment and administration costs, unless stated otherwise.
4. Buyer has the right to refuse deliveries for which, after the agreement was made, user raised the prices without prior notice to buyer. This right explicitly does not apply to goods not being part of user's standard product range and thus being bought or stored by user on buyer's special request, for the purpose of delivery to buyer.

Article 9 Changes to the agreement

1. If it is shown during the execution of the agreement that the work to be done needs to be changed and/or supplemented in order to ensure its proper execution, parties shall adapt the agreement accordingly in due time and in mutual consultations.
2. If parties agree that the agreement needs to be changed and/or supplemented, this decision may influence the time of completion of the execution. User shall inform the buyer thereof as soon as possible.
3. Should the change and/or supplement to the agreement have any financial and/or qualitative consequences, user shall inform buyer thereof in advance.
4. If a fixed rate has been agreed upon, then user shall indicate the degree to which the change of supplement to the agreement will result in an increase of said fixed rate.
5. Contrary to the conditions governing this matter, user shall not be able to charge additional costs if the change of supplement is the result of circumstances attributable to user.

Article 10 Payment

1. Payment must be made within 14 days from the date of invoice, in a way to be indicated by user and in the currency in which the goods were invoiced. Contestation of the amount of the invoices shall not suspend the fulfilment of the payment obligation.
2. If buyer fails to fulfil his payment obligation within the term of 14 days, then buyer shall be in default by operation of law. In that event, buyer shall owe an interest of 1% per month, unless the statutory interest rate is higher, in which case the statutory interest rate shall apply. The interest on the amount due and payable shall be calculated as from the day the buyer is in default until the moment, he has paid the amount in full.
3. User's claims against buyer shall become due on demand in the event that buyer is wound up, attached, declared bankrupt, or if a suspension of payment is granted.
4. User shall be entitled to have the payments made by the buyer go first of all to reduce the costs, subsequently to reduce the interest still due and finally to reduce the principal sum and the current interest. User shall have the right, without this leading user to be in default, to refuse an offer for payment, if the buyer designates a different sequence of attribution. User shall be entitled to refuse full payment of the principal sum, if said payment does not include the interest still due, the current interest and the costs.
5. Buyer's complaints concerning certain (parts of) deliveries shall never be reason to defer payment obligations concerning other goods, being part of previous, the same or subsequent deliveries.

Article 11 Retention of Title

1. All goods delivered by user, possibly also including designs, sketches, drawings, films, software, (electronic) files, etc., shall remain user's property until buyer has fulfilled all of his obligations under all agreements concluded with user.
2. Buyer shall not be authorised to pledge or encumber in any way the goods falling under the retention of title.
3. If third parties seize goods delivered subject to retention of title or wish to establish or assert a right to them, buyer shall be held to inform user thereof as soon as can reasonably expected.
4. The buyer shall undertake to insure the goods delivered subject to retention of title and to keep them insured against damage caused by fire, explosion and water as well as against theft and make this insurance policy available for inspection on first demand.
5. Goods delivered by user failing under the retention of title by virtue of the stipulations under Art. 1 of the present article, may only be sold on within the framework of normal business activities and must never be used as instrument of payment.
6. In the event that user wishes to exercise his ownership rights mentioned in the present article, buyer shall give user or third parties to be appointed by user, now for then, unconditional and irrevocable permission to access all sites and locations where user's property might be found and to take these goods back.

Article 12 Guarantee

1. User shall guarantee that the goods to be delivered shall meet the usual requirements and standards that can be set for and made upon them and that they shall be free of any defect whatsoever.
2. The guarantee mentioned under Art. 1 shall equally apply if the goods to be delivered are destined for use abroad and if the buyer explicitly informed user of this use in writing the moment the agreement was entered into.
3. The guarantee mentioned under Art. 1 applying to goods to which an expiry date has been assigned shall be valid till the expiry date. The guarantee applying to goods to which no expiry date has been assigned shall be valid for a period of 3 months following delivery, unless explicitly agreed otherwise.
4. If the goods to be delivered do not comply with said guarantee, user shall, at his discretion, replace or see to the repair of the goods, within a reasonable period of time following receipt thereof, or, if the goods cannot be returned in reason, following notification of the defect by the buyer. In the event the goods are replaced, the buyer shall already now undertake to return the replaced goods to user and to transfer ownership to user.
5. The guarantee mentioned for this purpose shall not apply when the defect originated as the result of injudicious or improper use, including transport or storage under conditions deviating from the applicable storage instructions, or when the buyer or third parties have introduced changes or tried to introduce changes to the goods without user's consent in writing or if they have used it for purposes for which the goods were not intended. Nor shall the guarantee mentioned for this purpose apply to goods not being part of user's standard product range and thus being bought or stored by user on buyer's special request, for the purpose of delivery to buyer.
6. If the guarantee given by user concerns goods produced by a third party, the guarantee shall be limited to the guarantee given by the producer of the goods.

Article 13 Collection Charges

1. If the buyer fails to fulfil his obligations (in due time) or defaults on them, then all reasonable costs incurred to have all extrajudicial costs and debts paid shall be borne by the buyer. In case of debt collection the costs shall be borne by the buyer: these costs will be calculated according to the methods generally approved in Dutch jurisdiction.
2. If user demonstrates that he has incurred higher expenses, which were necessary in reason, said expenses shall also qualify for reimbursement.
3. The reasonable judicial and execution costs possibly incurred shall equally be borne by buyer.
4. Buyer shall owe interest over the made collection charges.

Article 14 Suspension and Dissolution

1. User shall be authorised to suspend the fulfilment of the obligations under the agreement or to dissolve the agreement, in the event that:
 - Buyer does not fulfil or does not fully fulfil his obligations resulting from the agreement;
 - After the agreement has been concluded, user learns of circumstances giving good ground to fear that the buyer will not fulfil his obligations. If good ground exists to fear that the buyer will only partially or improperly fulfil his obligations, suspension shall only be allowed in so far the shortcoming justifies such action;
 - Buyer was asked to furnish security to guarantee the fulfilment of his obligations resulting from the agreement when the contract was concluded and that this security is not provided or insufficient. The authorisation to suspend shall lapse, if buyer still furnishes security within 10 working days after written request by or on behalf of user.
2. User shall furthermore be authorised to dissolve the agreement (have the agreement dissolved) if circumstances arise of such a nature that fulfilment of the obligations becomes impossible or can no longer be demanded in accordance with the requirements of reasonableness and fairness, or if other circumstances arise of such a nature that the unaltered maintenance of the agreement can no longer be demanded in all reasonableness.
3. If the agreement is dissolved, the user's claims against the buyer shall be forthwith due and payable. If user suspends fulfilment of his obligations, he shall retain his right under the law and the agreement.
4. User shall always retain the right to claim damages.

Article 15 Return of goods put at buyer's disposal

1. If user has put goods at buyer's disposal during and in connection with the execution of the agreement, buyer shall be held to return the delivered goods within 14 days in their original state, free of defects and in their entirety. If buyer fails to fulfil this obligation, all resulting costs shall be at buyer's expense.
2. If, for any reason whatsoever, buyer still remains in default to fulfil the obligation mentioned under Art. 1 after being warned to do so, user shall be entitled to recover the resulting damage and costs, including replacement costs, from buyer.

Article 16 Liability

1. If the goods delivered by user are defective, user's liability vis à vis the buyer shall be limited to the arrangements made in the present terms and conditions under "Guarantee".
2. If user is liable for direct damage, then said liability shall be limited to a maximum of twice the amount of the statement of expenses, at any rate that part of the agreement to which the liability relates.
3. Direct damage shall be understood to be exclusively:
 - The reasonable costs incurred to establish the cause and the volume of the damage, in so far said establishment relates to damage in the sense of the present terms and conditions;
 - The reasonable costs possibly incurred to have user's faulty performance meet the conditions of the agreement, unless such faulty performance cannot be attributed to user;
 - The reasonable costs incurred to prevent or limit the damage, in so far buyer demonstrates that said costs have led to the limitation of direct damage as meant in the present general terms and conditions.
4. User shall never be liable for indirect damage, including consequential damage, loss of profit, lost savings and damage due to business stagnation.
5. The limitations of liability for direct damage contained in the present terms and conditions shall not apply if the damage is due to intentional act or omission or gross negligence on the part of user or his subordinates.

Article 17 Transfer of Risk

1. The risk of loss of, or damage to the products being the subject of the agreement, shall be transferred to buyer the moment said products are judicially and/or actually delivered to buyer and therefore fall into the power of buyer or of third parties to be appointed by buyer.

Article 18 Force Majeure

1. Parties shall not be held to fulfil any of their obligations if they are hindered to do so due to a circumstance through no fault of their own and which cannot be attributed to them by virtue of law, a legal action of generally accepted practice.
2. In addition to the provisions of the law and the judge-made law in this respect, force majeure shall in the present general terms and conditions furthermore be understood to be any external circumstance, be it envisaged or not, on which user cannot have any influence but which prevents user from fulfilling his obligations. Industrial action at user's company shall also be understood to be a circumstance of force majeure.
3. User shall also be entitled to invoke force majeure if the circumstance rendering (further) fulfilment of the obligation(s) impossible, commences after the point in time on which user should have fulfilled his obligation.
4. Throughout the duration of the circumstances of force majeure, parties shall be entitled to suspend the fulfilment of their obligations. If this period lasts for more than two months, either of the parties shall be entitled to dissolve the agreement without any obligation to pay the opposite party damages.
5. Insofar user has already partially fulfilled his obligations resulting from the agreement at the moment the circumstance of force majeure commenced or shall be able to fulfil them an insofar separate value can be attributed to the part already fulfilled or still to be fulfilled respectively, user shall be entitled to invoice the part already fulfilled or still to be fulfilled respectively. The buyer shall be held to pay this invoice as if it were a separate agreement.

Article 19 Safeguarding

1. The buyer shall safeguard user against claims filed by third parties concerning intellectual property rights on material or data provided by the buyer, which shall be used for an during the execution of the agreement.
2. If the buyer provides user with information carriers, electronic files or software etc., the former shall guarantee that said information carriers, electronic files or software are free of viruses and defects.

Article 20 Intellectual Property and Copyrights

1. Without prejudice to the other stipulations of the present general terms and conditions, user shall reserve the rights and authorities to which user is entitled under the Copyright Act.
2. The buyer shall not be allowed to introduce changes to the goods and material provided, unless the nature of the delivered goods and material dictates otherwise or if agreed upon otherwise in writing.
3. The designs, sketches, drawings, films, software and other material or (electronic) files, possibly produced by the user within the framework of the agreement, shall remain user's property, irrespective of the fact whether they have been handed over to the buyer or to third parties, unless agreed upon otherwise in writing.
4. All documents, such as designs, sketches, drawings, films, software, (electronic) files, etc., provided by user, shall be destined to be used by buyer exclusively and must not be reproduced, made public or brought to the notice of third parties by buyer without prior consent from user, unless the nature of the documents provided dictates otherwise.
5. User shall reserve the right to use the knowledge gained due to the execution of the work for other purposes, in so far no confidential information shall be brought to the notice of third parties when doing so.

Article 21 Secrecy

1. Both parties shall be bound to secrecy of all confidential information they have received within the scope of their agreement from each other or from another source. Information shall be considered to be confidential if the other party has indicated so or if the confidential character results from the nature of the information.
2. If a statutory provision or a judicial decision compels user to convey confidential information to third parties designated by law or by the court and user cannot for that purpose invoke a legal right to refuse to give evidence or such a right acknowledged or allowed by the competent court, user shall not be held to pay damages or compensation and the opposite party shall not be entitled to demand the dissolution of the agreement on the ground of any damage resulting from said circumstance.

Article 22 Non-employment of the opposite party's personnel

1. Throughout the duration of the agreement and for one year following termination thereof, buyer shall not in any way, hire or employ in any other way, be it directly or indirectly, staff of user of enterprises whom user has engaged to execute the present agreement and who are (were) involved in the execution of the agreement, without prior proper business-like consultation on this matter, all this in accordance with the requirements of reasonableness and fairness.

Article 23 Disputes

1. The Court in user's place of business shall have exclusive jurisdiction to hear actions, unless the District Court is the competent Court. User shall nevertheless be entitled to submit the dispute to the Court deemed competent by the law.
2. Parties shall only refer the matter to the court if they have done their utmost to solve the dispute in mutual consultations. These efforts include mediation or arbitration by an expert Board, such to user's choice.

Article 24 Applicable Law

1. Dutch law shall apply to each and every agreement between user and the buyer. The Vienna Sales Convention shall be explicitly excluded.

Article 25 Changes to the Terms and Conditions, interpretation and their location

1. The present terms and conditions have been filed at the office of the Chamber of Commerce in Amsterdam – The Netherlands.
2. Translations of the present general terms and conditions may be made by or on behalf of user, for the convenience of non-Dutch clients only. User attempts to reflect the import of the terms correctly but will not accept any liability for possible imperfections in the translations. The Dutch version of these general terms and conditions prevails at all times in case of disputes with regard to the interpretation and purpose of these terms and conditions.
3. The most recently filed version shall always apply, or, as the case may be, the version valid at the time the agreement was concluded.

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