

Article 1 General

1. These general terms and conditions, hereinafter referred to as 'these general conditions' govern all transactions between Handelsonderneming Tehava B.V., hereinafter referred to as 'Tehava', and any Purchaser to which Tehava has indicated that they apply, insofar as there is no express written agreement between the parties to exclude them.
2. These general conditions also apply to any contract with Tehava for the performance of which Tehava has engaged any third party.
3. These general conditions are also intended to be complied with by employees and directors of Tehava.
4. The application of any purchase conditions or other terms and conditions of the Purchaser is hereby expressly excluded.
5. If any provision of these general conditions is or becomes at any time wholly or partially void or voidable, the other provisions shall remain fully in force. Tehava and the Purchaser shall then negotiate to agree new provisions to replace the void or avoided provisions, having regard as far as possible to the purpose and scope of the original provisions.
6. If there is any uncertainty surrounding the interpretation of any provision, then it shall be interpreted in accordance with the 'spirit' of these general conditions.
7. If any question arises between the parties that is not covered by these general conditions, then it shall be interpreted in accordance with the spirit of the same.
8. If at any time Tehava does not insist on strict compliance with these general conditions, this does not mean that these general conditions do not apply or that Tehava has in any way lost any right to enforce strict compliance with these general conditions in other situations.

Article 2 Tenders and offers

1. All tenders and offers from Tehava are without obligation, unless they contain a time limit for acceptance. A tender or offer shall lapse if the product to which the tender or offer relates ceases in the intervening period to be available.
2. Tehava cannot be held to any tender or offer if the Purchaser ought reasonably to be aware that any part of such tender or offer contains a clear mistake or typing error.
3. Prices stated in any tender or offer are exclusive of VAT and other government duties, as well as any contractual costs including travel and accommodation costs, postage charges, transport costs and administration charges, unless indicated otherwise.
4. If acceptance (whether or not with regard to minor points) differs from the terms contained in the tender or offer, then Tehava is not contractually bound. No contract shall be entered into in respect of this varied acceptance unless Tehava specifies otherwise.
5. A composite quotation does not oblige Tehava to perform any part of the job for an equivalent part of the total price. Tenders and offers do not automatically apply to future orders.

Article 3 Duration of contract, delivery periods, implementation and amendment of a contract

1. The contract between Tehava and the Purchaser is for an indefinite term unless the nature of the contract indicates otherwise or if the parties specifically agree otherwise in writing.
2. No time limit that is agreed or indicated for completion of certain work or for the delivery of certain items shall ever be construed as a deadline. In the event that a time limit is exceeded, the Purchaser should serve written notice of default upon Tehava, specifying a reasonable period of time in which Tehava should comply with its obligations.
3. If Tehava requires information from the Purchaser to be able to perform the contract, then the time period for performance does not start to run until the Purchaser has supplied such information to Tehava that is complete and accurate.
4. Delivery shall be ex works from Tehava. The Purchaser is obliged to purchase the goods at the moment they are made available. If the Purchaser refuses to provide, or delays in providing, information or instructions required to make the delivery, then Tehava is entitled to store the goods at the expense and risk of the Purchaser.
5. Tehava is entitled to engage third parties to perform any tasks.
6. Tehava is entitled to perform the contract in separate phases and to invoice for each completed phase.
7. If the contract is performed in phases, then Tehava may suspend performance of work that is part of a subsequent phase until the Purchaser has approved in writing the results of the immediately preceding phase.
8. If during the performance of the contract it appears that for this to be performed properly it is necessary to alter or add to the tasks involved, then the parties agree that Tehava shall be at liberty to amend the contract such that it can be properly performed. As a consequence, the originally agreed price may be increased or reduced. Tehava shall give notice of any price change as far in advance as possible. A change in the contract may also involve a change in the time period originally indicated for completion. The Purchaser accepts the possibility of the contract being changed, including changes to the contract price and time period for completion.
9. If the contract is amended or extended, then Tehava is entitled to commence performance only after consent is given by the person so authorised within Tehava and the Purchaser has consented to the new price and other conditions indicated for the performance of the contract, including the time period in which the contract will be completed. If the amended contract is not performed immediately or at all, this shall not constitute a breach of contract on the part of Tehava and does not entitle the Purchaser to terminate the contract. Tehava may, without thereby being in breach, refuse any request to amend the contract if this could in qualitative or quantitative terms affect, for example, the work to be performed or goods to be supplied under this contract.
10. If the Purchaser is in breach of its obligations towards Tehava, it is thereby liable for all loss, whether direct or indirect, (including costs) incurred by Tehava.
11. Even if Tehava has agreed a fixed price with the Purchaser, it is entitled to increase this

price at any time without the Purchaser thereby being entitled to terminate the contract, if such price increase is the result of any right or obligation under statute or regulations or the result of any increase in the price of raw materials, wages etc. or of other circumstances that were not reasonably foreseeable at the time the contract was entered into.

Article 4 Suspension and termination of contract (before completion)

1. Tehava is entitled to suspend its performance of, or terminate, the contract if:
 - the Purchaser has failed to meet its obligations in full, on time or at all;
 - after entering into the contract Tehava learns of circumstances that give it just cause to fear that the Purchaser will not fulfil its obligations;
 - the Purchaser at the time of entering into the contract was required to provide a guarantee for compliance with its obligations but fails to provide any adequate guarantee;
 - if due to any delay on the part of the Purchaser it is no longer reasonable to expect Tehava to perform the contract under the originally agreed terms, then Tehava is entitled to terminate the contract.
2. Tehava is also entitled to terminate the contract if circumstances arise that are of such a nature that it is no longer reasonable to expect Tehava to perform the contract under the originally agreed terms.
3. If the contract is terminated then the claims by Tehava against the Purchaser become immediately payable. If Tehava suspends performance of its obligations, it reserves its rights under the law and the contract.
4. If Tehava suspends or terminates the contract, it is not liable to compensate the Purchaser for any loss and costs however incurred.
5. If termination is the result of some act or omission of the Purchaser, then Tehava is entitled to recover compensation, including costs, for any direct or indirect loss.
6. If the Purchaser does not comply with its contractual obligations and such non-compliance justifies termination, then Tehava is entitled to terminate the contract with immediate effect without the requirement to pay any compensation, whereas the Purchaser, by virtue of its defective performance, is obliged to pay compensation.
7. If the contract is terminated by Tehava before completion, then Tehava shall negotiate with the Purchaser to ensure the transfer of tasks still to be performed to a third party, unless the termination is due to an act or omission of the Purchaser. If the transfer of the tasks involves Tehava in extra expense, then this expense shall be passed on to the Purchaser, which must pay such costs within the specified period, unless Tehava indicates otherwise.
8. In the event of insolvency, (an application for) a moratorium or liquidation, or an attachment upon property that is not removed within seven days, with regard to the Purchaser, or a debt repayment scheme or other situation whereby the Purchaser no longer has free disposal of its property, then Tehava is entitled to terminate the contract with immediate effect or to cancel the order or contract, without liability to pay compensation. Any claims that Tehava then has upon the Purchaser shall become immediately due and payable.
9. If the Purchaser has cancelled all or part of any order, then the cost of the items ordered or made ready for delivery, plus any transport and delivery costs and man hours set aside for performance of the contract shall be billed in full to the Purchaser.

Article 5 Force majeure

1. Tehava is not obliged to perform any obligation towards the Purchaser if it is prevented from doing so as a result of any situation for which it cannot be held responsible, or for which it is not otherwise held liable by law, the legal relationship or any commonly-accepted legal convention.
2. 'Force majeure' here means, in addition to its definition under statute and case law, all external circumstances, whether foreseen or not, over which Tehava can exert no influence and which prevent Tehava from complying with its obligations. The term includes suspension of work by employees of Tehava or third parties. Tehava may also rely on force majeure if the circumstance preventing (further) performance of the contract occurs after a date by which Tehava ought already to have performed its obligations.
3. During the period of force majeure, Tehava may suspend any contractual obligations. If this period exceeds six months, then either party is entitled to terminate the contract without any obligation to pay compensation to the other party.
4. Insofar as at the time the force majeure arose, Tehava had performed some of its contractual obligations, and those obligations that were or will be performed have a separate quantifiable value, then Tehava is entitled to bill separately for these said performances. The Purchaser must pay such an invoice as though it pertained to a separate agreement.

Article 6 Payment and collection costs

1. Payment shall be made within eight days of the invoice date in such manner as specified by Tehava and in the currency invoiced, unless specified otherwise by Tehava in writing. Tehava is entitled to send periodic invoices.
2. If the Purchaser fails to pay an invoice within the specified period, then it will automatically be in breach and becomes liable to interest at 4% per month on the outstanding sum or at the statutory interest rate if this is higher than 4%, calculated from the date on which the Purchaser becomes in breach up to the date the debt is paid in full, without the need for service of any kind of notice of default.
3. Tehava is entitled to apply the payments made by the Purchaser firstly to offset costs, then to reduce the accrued interest and finally to reduce the principal sum and accruing interest.
4. Tehava may, without thereby being in breach, refuse to accept payment if the Purchaser specifies a different sequence for the application of the payment. Tehava may refuse complete repayment of the principal sum if the repayment does not also cover accrued and accruing interest and enforcement costs.
5. The Purchaser is not entitled to set off any sum it owes to Tehava.

6. Any dispute regarding an invoiced amount shall not entitle the Purchaser to suspend payment. Any Purchaser not relying on section 6.5.3 (Book 6, Articles 231 to 247 of the Dutch Civil Code) is not entitled to suspend payment for any other reason.
7. If the Purchaser fails to comply in time or at all with any obligation, then all costs incurred in enforcing such compliance outside court are payable by the Purchaser. The actual costs thereby incurred by Tehava shall be invoiced and shall not be less than € 50 per invoice. Any extrajudicial and execution costs are also recoverable from the Purchaser, which is also liable to pay interest on these costs.
8. If the Purchaser has ordered goods which it was agreed it would pay for in advance, and it has still not paid for such goods more than two weeks after being informed that such goods were ready for delivery, then Tehava may enforce payment of the principal amount for this order, which shall be paid in full by the Purchaser in return for receipt for payment within the agreed time limit for payment. If payment is not made on time, then the Purchaser becomes liable for interest thereon and other costs.

Article 7 Retention of title

1. All goods supplied by Tehava under the contract remain the property of Tehava until the Purchaser has fully complied with all its obligations under any contract with Tehava.
2. Goods supplied by Tehava that are subject to the retention of title referred to in section 1 of this article may not be sold on or used as a means of payment. The Purchaser is not entitled to pledge or otherwise encumber the goods subject to this retention of title.
3. The Purchaser must take all reasonable steps to protect Tehava's ownership rights.
4. If any third party secures an attachment upon goods supplied subject to retention of title or seeks to attach or enforce any rights secured thereon, then the Purchaser must notify Tehava of this without delay.
5. The Purchaser undertakes to insure the goods supplied subject to retention of title against fire, explosion or water damage, and against theft, and to provide a copy of the insurance policy to Tehava on demand. Tehava is entitled to receive any Insurance moneys paid out as a result of any of the above. Insofar as necessary, the Purchaser undertakes to assist Tehava in any way deemed necessary or advantageous in order to secure such insurance payment.
6. In the event that Tehava wishes to enforce the ownership rights described in this article, the Purchaser gives its unconditional and irrevocable consent to Tehava and to any third party designated by Tehava to enter any premises in which the property of Tehava is stored and to remove it.

Article 8 Guarantees, inspection, complaints, limitation periods

1. The goods to be supplied by Tehava meet the generally accepted norms and standards that could reasonably be imposed at the time of delivery, subject to the goods being used in the normal way in line with standards prevalent in the Netherlands. The guarantee referred to herein covers goods intended for use in the Netherlands. For use outside the Netherlands the Purchaser should ascertain for itself whether the goods are suitable to be used in such other country and meet the relevant conditions laid down by such country. Tehava may in such a case provide a different guarantee or different conditions relating to the goods to be supplied or work to be performed.
2. The guarantee referred to in section 1 of this article shall be valid for a term of six months following delivery, unless given the nature of the delivered goods a different term is appropriate or the parties agree otherwise. If the guarantee supplied by Tehava relates to goods manufactured by a third party, then the guarantee is limited to the terms of the guarantee supplied by that manufacturer, unless specified otherwise.
3. Complaints concerning shipment or defects must be notified within 24 hours of receipt of the goods. Thereafter, the right to complain about shipment or defects is lost. Where the Purchaser collects the goods itself, then it should check the goods when it takes possession of them and thereafter any right to complain about defects is lost.
4. Any kind of guarantee shall lapse in respect of any defect occurring as a result of inexpert or improper use of the goods, use beyond their sell-by date, incorrect storage or maintenance of the goods by the Purchaser or a third party or where, without the written consent of Tehava, the Purchaser or any third party has altered (or tried to alter) the goods in any way or attached any goods to them which were not intended to be attached or if the goods are processed in any way not in accordance with the instructions. The Purchaser may also not rely on the guarantee if the defect has occurred by or as a result of circumstances over which Tehava could exercise no control, including weather conditions (such as extremes of rainfall or temperature) etc.
5. Any claim under a guarantee shall lapse if the defect is due, in the opinion of Tehava, to the use of the goods in question.
6. The Purchaser must inspect the goods as soon as they are made available to it or the relevant work has been carried out. The Purchaser should therefore check that the quality and quantity of the goods is in accordance with what was ordered and with the specifications agreed between the parties. Any visible defects should be reported to Tehava in writing within seven days of delivery. Any hidden defects should be reported to Tehava in writing immediately they are discovered and in any event within fourteen days of discovery. A report of defects must describe such defects in as much detail as possible to enable Tehava to respond appropriately. The Purchaser should assist Tehava to be able to properly investigate any complaint.
7. Even if the Purchaser complains in time, this does not entitle it to suspend its payment obligations and it remains liable to accept and pay for any other goods it has ordered.
8. If a complaint is made outside the time limits, the Purchaser loses any right to have the goods repaired or replaced, or to receive compensation.
9. If the goods are found to be defective and the claim has been made within the time limit, then Tehava shall either replace, repair or pay the Purchaser compensation for such goods - such choice to be within its sole discretion - within a reasonable period of them being returned or, if return is not reasonably possible, within a reasonable period of receiving written notice of such defects from the Purchaser. In the case of replacement, the Purchaser must return the goods to be replaced and ownership thereof to Tehava unless Tehava specifies otherwise.

10. Tehava only provides a guarantee if and insofar as all of the guarantee's terms are complied with and the guarantee does not come within any manufacturer's or third-party guarantee.
11. If a complaint is proved to be unfounded, then all costs incurred by Tehava in dealing with, and investigating, the claim, must be paid in full by the Purchaser, subject to a minimum charge of € 75 or 10% of the invoice value of the inspected goods.
12. After the expiry of the guarantee term any repair or replacement costs, including administration, shipment and call-out charges, shall be billed to the Purchaser.
13. As an exception to the statutory limitation periods, the limitation period for all claims against (and defences to) Tehava or any third party engaged by Tehava to perform a contract is one year.

Article 9 Liability

1. Insofar as Tehava may be liable, then such liability is limited in the manner specified in this article.
2. Tehava is not liable for loss of whatever nature resulting from any steps taken on the basis of incorrect or incomplete information supplied by or on behalf of the Purchaser.
3. Insofar as Tehava may be liable for any loss, then such liability is restricted to a maximum sum being the amount invoiced for that order, or such part of the order where liability lies. The liability of Tehava is in any event restricted to the amount paid out by the insurance company in the case in question.
4. Tehava is only liable for direct loss.
5. 'Direct loss' is restricted to the reasonable costs incurred in determining the cause and extent of the damage, insofar as this relates to the investigation of 'damage' as defined within these general conditions, any costs reasonably incurred in seeking Tehava to respond to its defective performance of the contract, insofar as such defective performance can be attributed to Tehava, and any reasonable costs incurred in preventing or limiting the extent of the loss, insofar as the Purchaser can show that such costs have resulted in a limiting of direct loss as defined in these general conditions.
6. Tehava is not liable for indirect loss, including consequential loss, loss of profit, lost savings or loss caused by business standstill.

Article 10 Transfer of risk

1. The risk of loss, damage and reduction in value transfers to the Purchaser at the moment that control over the goods is transferred to the Purchaser.

Article 11 Indemnity

1. The Purchaser indemnifies Tehava against any third-party basing a claim for damages on the performance of the contract the cause of which cannot be attributed to Tehava.
2. If Tehava is hereby held liable by any third party then the Purchaser must assist Tehava extrajudicially as well as within judicial proceedings and immediately take whatever steps may be reasonably expected of it. Should the Purchaser continue not to take adequate steps, then is entitled to take such steps itself, without the need to serve a notice of default. All costs and damages thereby incurred by Tehava and any third party are entirely at the expense and risk of the Purchaser.

Article 12 Intellectual property

1. Tehava reserves all rights and powers granted to it under the Copyright Act and other laws and regulations relating to intellectual property. Tehava is entitled to use knowledge it acquires through the performance of the contract for other purposes insofar as this does not involve the communication of any strictly confidential information from the Purchaser to any third party.

Article 13 Applicable law and disputes

1. All legal relationships to which Tehava is a party are governed by Dutch law, even if any obligation is performed wholly or partly outside the Netherlands or if the other party is established outside the Netherlands. The provisions of the Vienna Sales Convention are excluded.
2. The Court of Maastricht has exclusive jurisdiction to hear any dispute, unless any rule of mandatory law prescribes otherwise, without prejudice to the right of Tehava to bring any dispute before any other court with jurisdiction under the law.
3. The parties shall not bring a matter before the court until they have exhausted their best endeavours to resolve a dispute amicably.

Article 14 Place of deposit and changes to these general conditions

1. These general conditions are filed with the Chamber of Trade for Zuid Limburg as well as with the Court of Maastricht under number 5/2008 AL.
2. The general conditions that apply are the latest version so filed, or the general conditions that applied at the time the legal relationship with Tehava was entered into.
3. The Dutch text of these general conditions shall prevail over any translation thereof with regard to issues of interpretation.

This translation has no legal value. In case of any misunderstanding arising between the parties concerning this relationship, the only legally valid document is the agreement drawn in Dutch and legally deposited under number 5/2008 AL. Should you wish to obtain a hardcopy in Dutch of our general terms and conditions of payment and delivery, please contact us at +31 46 4752100 or at info@tehava.com