

	Algemene verkoop- en leveringsvoorwaarden van Van Dijk Heavy Equipment BV
	The general terms and conditions of sale and delivery of Van Dijk Heavy Equipment BV
	Conditions générales de vente et de livraison de Van Dijk Heavy Equipment BV
	Allgemeine Geschäftsbedingungen von Van Dijk Heavy Equipment BV

## I. General

1. These general terms and conditions of sale and delivery ("General Terms") apply to all offers and agreements of purchase/sale of goods ("Agreement") by Van Dijk Heavy Equipment BV ("VDHE"), unless provided otherwise in the offer or agreement. In case of any discrepancies between the terms of an Agreement and these General Terms, the terms of the Agreement will prevail.
2. The rights and obligations arising between VDHE and the buyer under the Agreements ("Buyer") may not be transferred by the Buyer to third parties without the prior written consent of VDHE.

## II. Offers

Any offers/quotations by VDHE, regardless if they contain a deadline for acceptance, are strictly without engagement, unless otherwise agreed in writing. VDHE remains free to withdraw the quotation, without any right of compensation for the Buyer, until the quotation is accepted by the Buyer by means of the signing and returning of a sales confirmation and receipt by VDHE of the down-payment amount included in the sales confirmation.

## III. Agreements

1. An Agreement shall not be deemed to have been validly concluded until VDHE has confirmed the order in writing, has commenced with the execution of the order or has received a down-payment on the order.
2. By signing a sales confirmation, the Buyer unconditionally agrees to purchase the relevant goods under the terms mentioned therein. The terms of the countersigned sales confirmation take precedence over any information previously provided to the Buyer (including but not limited to prices, product descriptions, hours/usage, condition, year, delivery terms) in quotations or other documentation.

## IV. Amendments

1. Amendments to these General Terms and/or the Agreement shall apply only to the extent agreed in writing between the Buyer and VDHE.
2. If such amendments lead to an increase in the costs, VDHE is authorized to pass on any resultant change in the purchase price to the Buyer.

## V. Prices

1. All quotations and prices charged by VDHE are the prices excluding VAT and other levies and taxes relating to the Agreement applying at the time the Agreement was concluded, unless expressly agreed otherwise.
2. If a change takes place in one of the price-determining factors after the offer has been issued, VDHE is authorized to adjust the prices correspondingly, even if the Agreement has since been concluded.
3. Price changes in excess of 20% provide the Buyer with the right to dissolve the Agreement, provided this is done in writing and within seven days of receipt of the relevant notification of the price change by VDHE. Such dissolution does not provide the Buyer with any entitlement to compensation for any loss whatsoever.

## VI. Payment

1. The Buyer is obliged to pay the full purchase price before delivery of the goods in question, unless agreed otherwise in writing, in accordance with paragraphs 2 and 3 of this clause VI.
2. The Buyer is obliged to pay the purchase price within the period stated on the sales confirmation. If no payment date is stated on the sales confirmation, payment should be made within 7 days of the date of invoice. The Buyer is not authorized to set off the purchase price or to suspend payment on account of any counterclaim against VDHE.
3. The payment term shown on the sales confirmation is a firm date. If the purchase price is not paid within the payment term, the Buyer shall be automatically in default without any written notice of default being required, irrespective as to whether the non-compliance can be attributed to the Buyer.
4. Without prejudice to its other rights, VDHE is authorized to claim interest on the outstanding amount at 1.5% per month, calculated from the due date in question. In addition, in the event of late payment, VDHE is authorized to suspend delivery and claim daily storage costs at EUR 3 per square meter until payment has been made in full.
5. All legal and extrajudicial costs actually incurred by VDHE in relation to a dispute with the Buyer, both as plaintiff and defendant, shall be for the Buyer's account. The extrajudicial collection costs shall amount to at least fifteen percent of the principal.
6. Payments by the Buyer shall be assigned to the oldest outstanding items, including interest and costs, even if the Buyer declares differently.
7. The Buyer shall have no right to reclaim down-payments.
8. In the event of late payment any adverse exchange difference shall be for the Buyer's account. The reference dates shall be the due date on the invoice and the date of payment.
9. Payments shall be made in euros, unless otherwise agreed in writing.
10. A Buyer making use of its rights to place goods in storage within the meaning of clause XVI remains obliged to pay the purchase price in the manner stated in paragraph 1 of this clause VI.

## **VII. Delivery date, delivery risk**

1. The delivery period mentioned or agreed in the offer and/or order confirmation and/or Agreement may in no circumstances be regarded as a firm date. Late delivery by VDHE shall accordingly not count as breach of contract.
2. The specified/agreed delivery period shall at any event, but not exclusively, be automatically extended by the period(s) during which:
  - Arrival and/or dispatch its delayed and/or there are any other circumstances temporarily preventing execution, irrespective as to whether this may be attributed to VDHE;
  - The Buyer fails to discharge one or more of its obligations vis-à-vis VDHE or there are well-grounded fears that it will fail to do so;
  - The Buyer does not enable VDHE to execute the Agreement; this situation arises for example if the Buyer fails to advise the place of delivery or to make available the details, equipment or facilities required for execution.
3. Equally, the Buyer may not refuse to receive or pay for the goods and/or demand compensation for direct or consequential loss or for costs incurred by the Buyer or by third parties in the event that the agreed delivery period is exceeded.
4. Delivery shall be deemed to have taken place at the point at which the goods have been placed at the Buyer's disposal by VDHE. Unless otherwise agreed delivery shall be made "Indumastraat 10, Deurne". As from the time of delivery, the goods become the sole responsibility of the Buyer. VDHE encourages the Buyer to take out adequate insurance cover as VDHE cannot be held responsible for any incidents of damage, unless otherwise agreed in writing.
5. All goods are transported and loaded at the Buyer's cost and risk, even if the consignment is sent carriage paid.
6. If VDHE arranges consignment of the goods at the Buyer's request, the time, method of consignment and consignment route shall be at VDHE's choice.
7. Transport insurance will only be taken out by VDHE at the express request of the Buyer; all the associated costs will be for the Buyer's account.
8. If VDHE has provided any equipment for the transportation or arranged for this to be done by a third-party, where appropriate after payment of a deposit, the Buyer shall be obliged to return the equipment to the address specified by VDHE, in the absence of which the Buyer will be liable to pay VDHE compensation.
9. Any equipment within the meaning of the previous paragraph must be returned in the condition in which it was received before transportation. VDHE is authorized to have the equipment inspected by an expert after use. The Buyer is obliged to pay compensation for any damage to the equipment provided to it.
10. Premature and/or partial deliveries are permitted; in this regard the Buyer is obliged to settle the invoice in question as though it concerned a separate transaction.

## **VIII. Exchange/Guarantee**

1. Each and every good sold and delivered under an Agreement will be sold "as is, where is", without any guarantees or warranties, express or implied, statutory (conformiteit) or otherwise of any nature whatsoever being extended. Without limiting the generality of the foregoing, VDHE makes no representation or warranty that any of the goods are fit for any particular purpose, are merchantable or financeable, are of any particular age, year of manufacture, model make or condition or are suitable or eligible for import into any particular country or jurisdiction, unless expressly indicated otherwise.
2. Purchased goods may not be exchanged or returned.
3. If VDHE has supplied the buyer with new goods, no other warranties apply than the manufacturer's warranty. The Buyer can only rely on the manufacturer's warranty, provided it has complied with the terms and conditions stated therein.

## **IX. Inspection**

The buyer has the right to inspect the goods before delivery at a place and time determined by VDHE. The costs of such inspection shall be for the buyer's account. The buyer accepts the goods in the condition it was in at the time of inspection.

## **X. Non-compliance/dissolution/suspension**

1. VDHE is authorized to dissolve the Agreement with immediate effect, without legal intervention, in full or in part, or to suspend its execution, without prejudice to its other rights to compliance and/or compensation, in the following instances:
  - the Buyer fails to comply with any obligation it may have towards VDHE, and does not cure such failure within a reasonable period after it was given notice of default by VDHE. No notice of default is required if the failure cannot be cured by the Buyer;
  - the Buyer seeks a (temporary) postponement of payment or files for bankruptcy;
  - bankruptcy proceedings are instituted against the Buyer;
  - the Buyer's business is shut down or liquidated;
  - the Buyer enters into a private composition with its creditors;
  - the Buyer, after having been invited in writing by VDHE to provide security for its obligations under the Agreement, fails to do so in a form satisfactory to VDHE within seven days after the notification.
2. If VDHE dissolves the Agreement pursuant to paragraph 1 of this Clause X in full or in part, any claim on the Buyer shall become immediately due and payable, without VDHE being obliged to pay compensation.
3. If VDHE dissolves the Agreement pursuant to paragraph 1 of this Clause X in full or in part because the Buyer failed to make payment in time:
  - the down-payment made to VDHE shall be used as a compensation for the losses and damages incurred by VDHE as a result thereof (without such down-payment being the full compensation VDHE is entitled to);
  - VDHE may at its own discretion resell the goods and charge the Buyer a 15% handling fee plus any price difference between the original selling price and the price VDHE subsequently sells the goods for.

## **XI. Retention of title**

1. Delivery is made subject to retention of title. Title to the goods remains with VDHE until VDHE has received payment in full for all goods delivered or to be delivered by VDHE to the Buyer and/or for all activities performed or to be performed in respect of the delivery, as well as in respect of claims on account of failure to perform on the part of the Buyer, on whatever grounds.
2. If VDHE dissolves the Agreement pursuant to paragraph 1 of Clause X in full or in part, VDHE is authorized to repossess the delivered goods that have remained its property in accordance with paragraph 1 of this Clause XI.
3. In so far as necessary for its normal business operations, the Buyer is authorized to make use of the goods that are subject to retention of title. If the Buyer makes use of this right, it will be obliged to make delivery to third parties of the goods subject to similar retention of title as retained by VDHE. The Buyer is also required to provide VDHE at first request with an undisclosed pledge on the claims that it has or will obtain on those third parties in connection with the sale of the goods. Should the Buyer refuse to do so, this provision shall constitute irrevocable authority on the part of VDHE to institute such an undisclosed pledge.
4. The Buyer is not authorized to sell the goods that are subject to the retention of title other than in the course of its normal business operations, to pledge them or in any way infringe VDHE's retention of title by the establishment of a restricted real right or otherwise.

**XII. Right of retention**

VDHE is authorized to suspend the performance of the obligation to surrender the property of the Buyer that is in its possession in connection with any order, until the claim by VDHE in relation to such property has been paid in full including interest and costs.

**XIII. Trade-ins**

If the Buyer continues to use a traded-in product in anticipation of delivery of the product purchased by it, any costs in relation to the aforementioned product and any reduction in value shall be for its account.

**XIV. Liability**

1. VDHE is not liable for any loss due to any failure to comply with its obligation(s) vis-à-vis the Buyer, except in the case of willful intent or gross negligence on the part of VDHE or its supervisory subordinates.
2. Equally, VDHE is not liable for the loss arising from willful intent or negligence/gross negligence of supervisory/non-supervisory subordinates or of others engaged by it for the purposes of executing the Agreement.
3. VDHE is not liable for incorrect hours/kilometer readings/years of construction/time readings and/or other incorrect specifications of the products.
4. VDHE does not accept any liability for any advice submitted by it or on its behalf.
5. If the exclusions/limitations of liability in the preceding paragraphs should fail to stand up in court for whatever reason, VDHE's liability for non-compliance or non-timely or inadequate compliance shall in no circumstances exceed the purchase price actually received by VDHE from the Buyer for the goods in question.

**XV. Force majeure**

1. In the event of force majeure VDHE is authorized to dissolve the Agreement in full or in part, or alternatively to suspend the implementation thereof, without any liability to pay compensation.
2. Force majeure is deemed to cover any circumstance outside the will and beyond the control of VDHE that may or may not have been foreseeable at the time of the conclusion of the Agreement, as a result of which compliance could not be reasonably demanded of VDHE, including but not limited to war, governmental measures, lack of raw materials, factory stoppages or traffic disruptions, as well as transport difficulties of whatever nature, work stoppages, lock-out or lack of personnel, quarantine, epidemics, time lost through frost, failures on the part of third parties engaged by VDHE for the execution of the Agreement and any other circumstances seriously complicating compliance with the Agreement.
3. If VDHE has already partially discharged its obligations upon commencement of the force majeure, it shall have the right to charge separately for goods already delivered and the Buyer shall be bound to settle the invoice in question as though this concerned a separate agreement.

**XVI. Storage**

1. If for whatever reason the Buyer is not in a position to take receipt of the goods at the agreed time and the goods are ready for delivery, VDHE will, storage facilities permitting, store and secure the goods at the buyer's request until they are delivered to the buyer.
2. The Buyer is obliged to reimburse VDHE for the daily storage costs of EUR 3 per square meter.
3. Storage shall take place solely at the risk of the owner of the product.

**XVII. Partial nullity**

If one or more provisions in these General Terms and/or the Agreement prove invalid, the remaining provisions shall continue in full force and effect. The invalid provisions will be replaced by an appropriate regulation approximating the intention of the parties and the economic result being aimed at by them as closely as possible in a legally effective manner.

**XVIII. Applicable law**

These General Terms and/or the Agreement are subject to Dutch law. The applicability of the Vienna Sales Convention is explicitly excluded.

**XIX. Disputes**

1. If the Buyer has its seat in any country that is a member state of the EU, any dispute arising under these General Terms and/or the Agreement will be resolved exclusively by the competent Dutch court in Oost Brabant, location 's-Hertogenbosch.
2. If the Buyer has its seat outside of the EU, any dispute arising under these General Terms and/or the Agreement will be finally settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute (Nederlands Arbitrage Instituut) as at present in force. The arbitral proceedings shall be conducted in the English language. The tribunal shall comprise of 1 (one) arbitrator. The tribunal shall decide in accordance with the rules of law. The place of arbitration shall be Eindhoven, the Netherlands.