

GENERAL TERMS & CONDITIONS OF SALE AND DELIVERY OF THE PRIVATE LIMITED-LIABILITY COMPANY E-KING B.V., HAVING ITS REGISTERED OFFICE IN AMSTERDAM

Article 1. General

1. These terms & conditions apply to all offers made by E-King B.V., hereinafter to be referred to as E-King, and to all contracts concluded by E-King with customers, hereinafter to be referred to as the other party, relating to the sale or making available of goods on other grounds. Stipulations to the contrary are only binding for E-King following written agreement therewith from E-King and only in relation to the contract to which the agreement in question pertains.
2. Referral by the other party to its own terms & conditions cannot be accepted by E-King, unless such acceptance is specifically agreed to in writing, in each separate instance.
3. In as far as it is not stated otherwise in these general terms & conditions, the stipulations of the Vienna Sales Convention also apply to all offers and contracts concluded by E-King.

Article 2. Offers.

1. All illustrations, drawings, statements of weight, technical specifications and other information made known to the other party by E-King or made known to E-King by the other party prior to, upon or after the offer or order confirmation, whether included in prospectuses, catalogues, circulars, advertisements or price lists or not, are considered to be approximate indications. Information derived from such can only be binding if such is agreed in writing.
2. Contracts concluded with the other party shall under no circumstances imply that rights to offers, calculations, models, artistic or technical designs, descriptions, drawings, sketches and diagrams, etc., produced by or through E-King, are transferred to the other party.
3. Offers, illustrations, drawings, calculations, diagrams and designs provided by E-King and other documents created or published by or through E-King remain the inalienable property of E-King or the designer and may not be provided to third parties for inspection, in any form whatsoever, nor made available nor used in any manner whatsoever without written permission from E-King or the designer. The other party is obliged to maintain confidentiality concerning all information derived from documents as referred to above coming to its notice in relation to the contract.

Article 3. Prices.

1. Prices quoted by E-King are based on the foreign exchange rates applicable at the time of quotation, import and export duties and equivalent levies, insurance premiums, taxes, wage costs and similar factors.
2. If after the date of the offer or the conclusion of the contract, import or export duties, taxes or other levies, either equivalent or not, set by the government, change, E-King is entitled to adjust the price quoted or agreed accordingly.
3. Unless it is specifically stated otherwise, prices quoted are to be increased by turnover tax. All prices are ex works.

Article 4. Payment.

1. E-King is entitled at all times to deliver exclusively in return for cash payment or cash on delivery. In the event that E-King becomes aware of circumstances following conclusion of the contract that give solid grounds for it to suspect that the other party will not fulfil its payment or other obligations, E-King is entitled to suspend delivery and shipment until the other party has provided adequate security for the fulfilment of its obligations. The other party is then liable for the losses incurred and to be incurred by E-King through late delivery and shipment.
2. Unless E-King has made use of its entitlements as described in Paragraph 2, the other party is obliged to pay the amount it owes within 30 days or another, specifically agreed, number of days from the date of invoice at E-King's offices or to a bank or giro account to be specified by E-King, in euros. Payments made to E-King's bank or giro account within eight days of the date of invoice are granted a payment discount of van 2%.
3. Negligence on the part of the other party in relation to taking possession of goods, or disputes concerning the delivery, are without prejudice to the other party's payment obligation.
4. In the event that E-King makes partial deliveries, E-King is entitled to invoice for each partial delivery separately and is not obliged to make further deliveries until the invoices for the partial deliveries already made have been paid, without prejudice to that stipulated in the other paragraphs of this article.
5. In the event that the other party has not fulfilled its payment obligation on the due date, it is in default immediately and without any notification of default being required.
6. If payment is not received on time, the other party is liable, without any demand or notification of default, to pay interest equal to the commercial interest rate in accordance with Art. 6:119a BW, increased by 3% points, on the outstanding part of the principal sum.
7. The cost of collection, both in and out of court, is at the expense of the other party. The court costs include all costs of litigation incurred by E-King, also in as far as these exceed any award of costs in accordance with the usual rates for such.

8. The other party is not entitled to set off its payment obligation, nor to suspend this.

Article 5. Delivery period.

1. Agreed delivery periods may never be considered to constitute a deadline, unless it is agreed otherwise in writing. In the event of late delivery, E-King must therefore be put into default in writing.
2. The agreed delivery period commences at the last of the following moments:
 - a. the day on which the contract was concluded;
 - b. the day on which the other party, at E-King's request, provided adequate security for the prompt and full settlement of its payment and other obligations as referred to in Article 4 Paragraph 1 of these terms & conditions.
3. When part of the order is ready, E-King may elect either to deliver this part, or to wait until the whole consignment is ready, without prejudice to that stipulated in Paragraph 1 of this article.
4. If, following a demand for payment, the other party remains in default in relation to taking possession of the goods, E-King may elect, at the other party's expense, either to deliver to an address and time to be determined by E-King, or to dissolve the contract or the part of the contract not yet performed, without legal intervention, and without prejudice to E-King's right to compensation.

Article 6. Non-attributable shortcoming (force majeure).

1. In the event that E-King is temporarily unable to fulfil its obligations owing to circumstances, arising outside of the fault and risk of E-King and after conclusion of the contract, E-King is entitled to suspend performance of the contract for the duration of this incapacity.
2. In the event that E-King is permanently unable to fulfil its obligations owing to circumstances arising as described in Paragraph 1 above, each of the parties is entitled to dissolve the contract in full or in part.
3. Circumstances as referred to above include in any event war, threat of war, riot, war risk, fire, water damage, flood, strikes, import and export impediments, occupation of premises, lockouts, government measures, machine malfunction, interruptions to the supply of power, interruption of operations and the event that E-King is prevented from delivering by its own suppliers, for any reason whatsoever.

Article 7. Delivery, transfer of risk and transport.

1. The other party bears the risk of the goods it has ordered from the moment, on which these leave the storage facility/factory in Germany. This is also the moment of delivery of the goods to the other party, unless a situation arises as described in Article 10 of these terms & conditions.
2. The other party itself will ensure, including in the event that E-King provides (part of) the transport under commission from the other party, that insurance is taken out to cover the risk of breakage, loss, misplacement or theft of the goods during transport.

Article 8. Complaints.

1. Every contract entered into by E-King is entered into subject to the obligation upon the other party to buy off the guarantee period by means of a discount percentage of the sale price agreed in advance.
2. The above restricts the other party's entitlement to complain to the case of faulty goods, subject to the understanding that E-King provides no guarantee whatsoever in relation to goods delivered or components thereof, other than the guarantee E-King receives in relation to the goods and/or components thereof from the supplier of the goods or the component in question.
3. In the case described in Article 8 Paragraph 2, the stipulations of the Vienna Sales Convention apply, in particular Articles 38 through 40. The burden of proof is on the other party invoking a right on the grounds that the goods do not correspond to the contract.
4. The other party undertakes to cooperate in full in all of that E-King may consider essential to verify the validity of the complaint, including inspection of deliveries made on behalf of E-King.
5. Goods may not be returned by the other party without prior written permission from E-King. Granting the permission as referred to above does not imply recognition of the complaint as valid. After permission has been received, the goods must be returned, unless these were received in a damaged state, in an undamaged state and in their original packaging to E-King at the risk and expense of the other party. E-King will keep these returned goods at the risk and expense of the other party.
6. Minor deviations in models, dimensions, colours, as well as alterations to the product in line with the latest technological developments will under no circumstances constitute a failure on the part of E-King.

Article 9. Dissolution.

1. Without prejudice to that stipulated in Article 4, the agreement will be legally dissolved, without legal intervention and without any notification of

default being required, at the moment the other party, having failed to fulfil (in full) the obligations arising from the contract, is declared bankrupt, requests a moratorium or loses disposal of its assets or part thereof through attachment, being placed under legal restraint or otherwise, unless the trustee or administrator recognises the obligations arising from this contract as an estate debt and stands surety for the payment thereof.

2. Outstanding claims between the parties become immediately payable in full upon dissolution. The other party is liable for all losses incurred and to be incurred by E-King in this respect.
3. In the event that the other party fails to fulfil the obligations (in full/on time/satisfactorily) upon it ensuing from any contract entered into with E-King on the grounds of these terms & conditions, as well as in the event of closing down or winding up of the other party's business or his/her decease, E-King is entitled to dissolve the contract in part or in full (and to reclaim that which it has delivered, in as far as this has not yet been paid for) without legal intervention and without notification of default being required, and/or to demand payment for the part of the contract already performed and/or to demand payment in advance for further deliveries. In these cases, existing claims between the parties become immediately payable. The other party is liable for all losses incurred and to be incurred by E-King in this respect.

Article 10. Retention of title.

1. As long as the other party has not paid the complete amount of the claim with any additional costs and any claim for compensation by E-King on the grounds of attributable failing on the part of the other party in this respect, or has not provided adequate security, E-King retains title to the goods.
2. Except in the event of a stipulation to the contrary, E-King will also retain the title to the goods for that which the other party owes to E-King or will owe to E-King by virtue of previous or later contracts by virtue of which E-King has delivered goods or will deliver goods and/or in addition to the delivery has performed work or will perform work, or by virtue of failure on the part of the other party in the performance of a contract as referred to above, unless the other party has provided adequate security for its obligations as referred to above.
3. The title is transferred to the other party as soon as the other party has fulfilled all of its obligations vis-à-vis E-King as referred to in Paragraphs 1 and 2.
4. In relation to the application of that stipulated in the first two paragraphs of this article, unless agreed otherwise in writing, each payment that could be allocated to two or more obligations on the part of the other party vis-à-vis E-King, will in the first instance be allocated to the obligation(s) to be specified by E-King, to which the retention of title referred to in Paragraphs 1 and 2 of this article does not apply. Payment summaries, reminders, etc., provided by or on behalf of E-King to the other party, may not be seen as an allocation as referred to in the previous sentence, unless E-King states otherwise in writing.
5. As long as the title to goods delivered by E-King has not yet been transferred to the other party, the other party is obliged to satisfactorily insure the goods to which E-King holds the title against fire and theft. The other party is obliged, if requested, to make the policy and proofs of payment of the insurance premiums available to E-King for inspection.
6. The other party is obliged to immediately report by telephone any claims by third parties to goods to which E-King has retained the title, as well as attempts by third parties to acquire disposal of goods to which E-King has retained the title or to attach these. The other party is also obliged to confirm any report as described above immediately to E-King in writing.

Article 11. Resale, penalty clause and audit.

1. As long as the goods delivered have not yet been paid in full, the other party is not entitled to pledge the goods, nor to transfer them in any other manner, under any title whatsoever, either free of charge or not and whether in use or not to another party, nor to make these available to such, other than sale or delivery as part of its normal business operation, unless E-King states otherwise in writing.
2. If the other party acts contrary to that stipulated in the first paragraph, it is liable to pay to E-King a penalty for each action covered by one of the prohibitions stated there. This penalty will be equal to twice the invoice amount. All of which is without prejudice to E-King's entitlement to claim compensation for the losses it has incurred and will incur, instead of the penalty.
3. E-King is authorised to have an independent accountant audit the books of the other party in order to ensure compliance with that stipulated in the first paragraph.

Article 12. Liability.

1. Excluding cases of intent or gross negligence, E-King is not liable for any losses, howsoever called, and arising from any cause whatsoever, unless and in as far as E-King's liability in the matter is insured.

2. E-King will under no circumstances be obliged to pay compensation for trading losses incurred by the other party and/or third parties, howsoever caused.
3. The other party is obliged to ensure that the goods delivered by E-King are stored by the carrier upon delivery in a suitable, safe manner in an appropriate space. The other party is also obliged to keep the goods delivered by E-King in a suitable, safe manner in an appropriate space or have them kept in this manner and to ensure that these are treated in a careful and safe manner. The other party is obliged to indemnify E-King against all claims by third parties on the grounds of damage, caused by failure to comply with the obligations described in the previous sentence.
4. In the event that the other party holds E-King liable for any damage, howsoever called or arising from any cause whatsoever, it is obliged to demonstrate to E-King of its own volition that it has treated the goods delivered in an appropriate manner, in relation to the nature of the product concerned. All advice given by or on behalf of E-King concerning the storage, transportation, use or application of the goods delivered by E-King is completely without obligation. E-King will under no circumstances be liable for damage, howsoever called or howsoever arising, caused either directly or indirectly by following such advice.
5. The other party is obliged to indemnify and compensate E-King with regard to claims, including for compensation, brought by third parties against E-King, if these claims by third parties are based on breach of intellectual or industrial property rights through the use, in any manner whatsoever, of drawings, data, materials, samples, models or components, or through the application of working methods or instructions for the performance of the assignment to E-King by or on behalf of the other party, all in the broadest possible sense.

Article 13. Transfer of rights and obligations and setting off.

1. Where in this article reference is made to a group company, this is considered to mean a group company in the sense of Article 2:24b of the Dutch Civil Code.
2. E-King is entitled to transfer its legal relationship to the other party to a group company affiliated to E-King at all times, for which transfer the other party grants E-King permission now for then.
3. The other party is not permitted to cede, pledge or transfer in any other manner, under any title whatsoever, its claims on E-King ensuing from the contract, including free of charge, to another party, nor to make these available to such, without prior written permission from E-King.
4. E-King is entitled at all times to set off claims on the other party, on any grounds whatsoever and irrespective of whether these are due, with claims, on any grounds whatsoever and irrespective of whether these are due, the other party has on E-King or a group company affiliated to E-King. The parties are discharged for the joint amount of the claims thus set off.
5. E-King is at all times entitled to pay amounts it owes to the other party, on any grounds whatsoever and irrespective of whether these are due, to a group company affiliated to E-King to offset its debt to the other party, instead of to the other party, if and to the extent that the group company has any claim, due or not, on the other party, through which payment the claims of that group company on the other party are cancelled up to the joint amount of the claims.
6. E-King is at all times entitled to suspend fulfilment of one of its obligations vis-à-vis the other party in the event that it or an affiliated group company has a claim, on any grounds whatsoever and irrespective of whether this is due, on the other party or a group company affiliated to the other party.

Article 14. Disputes.

1. The law of the Netherlands is exclusively applicable to all contracts entered into with E-King and any further contracts entered into in performance of these.
2. All disputes arising from the contracts referred to above, except those in relation to which the sub-district court has absolute jurisdiction, will be adjudicated exclusively by the competent court in 's-Hertogenbosch, without prejudice to the competence of other courts in relation to interim, protective or enforcement measures.

Article 15. Deposit.

These terms & conditions are deposited with the Chambers of Commerce of Amsterdam under number 34108940 and take effect from January 1, 1999.

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