



van Heek textiles

General Terms and Conditions of Sale, Delivery and Payment of the private limited company L. van Heek Textiles B.V., with its registered office and principle place of business in Losser, the Netherlands.

Article 1 Definitions and scope

- 1.1 The following terms shall have the following meaning in these general terms and conditions of sale, delivery and payment:
 - a. Seller: the private limited company L. van Heek Textiles B.V., with its registered office in Losser, the Netherlands.
 - b. Buyer/Customer: any natural or legal person with whom the Seller enters into a contract or negotiates regarding a contract.
 - c. Contract: any contract established between the Seller and the Buyer/Customer, any amendment or supplement thereto, as well as all actions – including legal actions – to prepare and to perform the Contract;
 - d. Terms and Conditions: these general terms and conditions of sale, delivery and payment.
- 1.2 These Terms and Conditions shall apply to all contracts entered into between the Seller and the Buyer/Customer as well as to all offers, tenders, quotes and recommendations drawn up by the Seller.
- 1.3 If a provision of these Terms and Conditions is void or is nullified, the other provisions shall remain entirely in force. The Seller and the Buyer shall then consult with each other to agree on a new provision to replace the original provision, which new provision shall reflect the aim and purpose of the void or nullified provision as far as possible.
- 1.4 The applicability of general terms and conditions and/or other terms and conditions of the Buyer/Customer is hereby expressly excluded.
Deviations from these Terms and Conditions in favour of other general terms and conditions may only apply to the Seller if the Seller accepts said deviations in advance in writing.
- 1.5 The Seller shall be entitled to amend its Terms and Conditions at any time.

Article 2 Offers and tenders

- 2.1 Every offer, tender, quote or recommendation issued by the Seller shall be free of obligation, unless otherwise agreed expressly and unambiguously in writing.
- 2.2 A contract with the Seller shall be established if and as soon as the Seller issues written acceptance of an order from the Buyer/Customer and/or as soon as the Seller has begun to perform the order. The order confirmation sent by the Seller to the Buyer/Customer shall be deemed to accurately and completely reflect the content of the Contract.
- 2.3 Any supplementary arrangements or amendments to the Contract made at a later date shall only be valid if they have been confirmed in writing by the Seller and the Buyer/Customer does not object to them in writing within eight days.
- 2.4 The Seller shall not be bound by its offer or tender if it is reasonable to expect the Buyer/Customer to understand that the offer or tender, or any part thereof, contains an obvious mistake or clerical error.

- 2.5 All offers issued by the Seller shall be valid for a maximum of 30 days after the date of the offer or tender, unless otherwise stated.
- 2.6 The Seller reserves the right to withdraw offers or tenders at any time.
- 2.7 An order may only be cancelled within 24 hours of its placement, in which case the Buyer/Customer shall owe the Seller fixed compensation of 15% of the agreed price.

Article 3 Prices

- 3.1 The prices stated in the Contract, tender or offer are in euro excluding VAT and other government levies, unless otherwise indicated.
- 3.2 The prices stated by the Seller are based on the cost factors applicable at the time of establishment of the Contract, such as currency exchange rates, manufacturers' prices, the price of raw and other materials, wage and transport costs, insurance premiums, taxes, import duties and other government levies.
- 3.3 The Seller reserves the right to increase the agreed price if the cost price of goods, transport costs and/or other cost price factors have increased. The Buyer/Customer shall be informed in writing about the price increase as soon as possible. If the price increase takes place within three months of the parties entering into the Contract, the Buyer/Customer shall have the right to terminate the Contract in whole or in part by registered letter within 10 days of the date of the written notification from the Seller. If no written notice has been received from the Buyer/Customer within 10 days, the Buyer/Customer shall be deemed to consent to the price increase.

Article 4 Delivery

- 4.1 The product shall be transported as far as the Dutch border, or until it is on board a ship in a Dutch harbour or an aircraft at a Dutch airport at the expense of the Seller, unless otherwise agreed in writing. Clearance shall be arranged by the Seller but shall be at the expense of the Buyer. Prices, which include delivery carriage paid or cost insurance freight (CIF) delivery, shall be based on the cheapest method of transport. If the Buyer requires or prescribes a special transport route or alternative means of transport, the resulting extra costs shall be at the expense of the Buyer.
- 4.2 The goods shall be sent at the risk of the Buyer in all cases.
- 4.3 The Seller shall never be obliged to insure the goods at the Seller's own expense.
- 4.4 If delivery of a specific quantity has been agreed, the Seller shall have the right to deliver 5% more or less than the agreed quantity.
- 4.5 If the Buyer fails to take delivery of the goods in a timely manner, a new deadline of ten days for taking delivery shall then be set, after which the Seller shall have the option of either demanding that the Buyer take delivery of the goods and claiming compensation or deeming the Contract to have been terminated without recourse to the courts and claiming compensation for the damage caused in this connection.
- 4.6 Contrary to the provisions of the previous paragraph of this article, in the case of block orders (i.e. orders where the quantity per colour and/or pattern has not yet been specified and/or where the delivery per time unit has not yet been fixed) the Buyer/Customer shall be required to specify the quantity per colour and/or pattern and/or to fix the delivery per time unit in a timely manner.
In the event that the Buyer/Customer fails in this regard but does provide these specifications within no more than ten days after the deadline by which these specifications should have been provided, the Seller shall have the right to extend the agreed delivery deadline by up to a maximum of thirty days. If the aforementioned ten-day deadline has expired without the Seller receiving the necessary specifications, the Buyer shall owe compensation to the Seller for damages sustained because of this delay, without prejudice to the right of the Seller to deem the Contract to have been terminated and to claim compensation in that connection.

Article 5 Delivery deadlines

- 5.1 The delivery deadlines stated by the Seller are for information purposes only and are not final, unless otherwise agreed in writing. The Seller shall not be in default by the mere fact of exceeding a stated deadline. In the event that the Seller exceeds a delivery deadline indicated by the Seller, the Buyer/Customer shall have the right to demand in a registered letter that the

Seller deliver within 30 days. If that delivery deadline is also exceeded, the Buyer/Customer shall have the right to terminate the Contract. The Seller shall not be liable for the damage sustained by the Buyer/Customer as a result.

Article 6 **Retention of title**

- 6.1 In spite of the fact that the delivery has actually taken place, ownership of the goods delivered by the Seller shall not be transferred to the Buyer/Customer until the Buyer/Customer has paid all amounts owed or to be owed by it to the Seller under the Contract, in full, including – but not limited to – the purchase price, costs and any amounts owed by virtue of the present Terms and Conditions.
- 6.2 As long as the ownership of the goods has not transferred to the Buyer/Customer, the Buyer/Customer shall not be allowed to resell, pledge, loan or otherwise transfer the goods as security to third parties, except within the normal business operations of the Buyer/Customer, unless the Buyer/Customer has been granted a moratorium/suspension of payments or has been declared bankrupt/insolvent.
- 6.3 The Buyer/Customer shall be obliged to store the goods – which were delivered subject to retention of title – with due care and as recognisable property of the Seller and to insure them properly and maintain that insurance cover against normal business risks.
- 6.4 If the Buyer/Customer fails to comply with its obligation to pay or has payment difficulties, the Seller shall be entitled to take back the goods delivered under retention of title that are still in the possession of the Buyer. The Buyer/Customer shall cooperate with this process and shall compensate the Seller for the cost of taking back the goods.

Article 7 **Payment**

- 7.1 The invoice shall bear the date of the day of delivery or of the day when the goods were made available. The Buyer/Customer shall pay the amount of the invoice to the Seller by the deadline stated on the invoice by transferring the amount in question into a bank account to be indicated by the Seller in the currency indicated on the invoice.
- 7.2 Promissory notes shall not be accepted. No compensation for interest shall be given in the event of payment before the deadline.
- 7.3 The payments made by the Buyer/Customer shall serve in the first place to cover all interest owed and costs and in the second place to cover due and payable invoices that have been outstanding for the longest period of time, even if the Buyer/Customer states that the payment relates to a later invoice.
- 7.4 In the case of payment through a bank, the date of payment shall be the date when the amount is credited by the bank to the Seller's account.
In the case of payment by cheque, the date of payment shall be the date when the Seller cashes the cheque.
- 7.5 If the Buyer/Customer fails to pay the invoice amount owed by the payment deadline, the Buyer/Customer shall owe interest of 1% per month or any part thereof, starting on the day when the payment deadline expires. All agreed payment deadlines shall be final deadlines. The Buyer/Customer shall be in default because of the mere fact that the final deadline has expired, without notice of default being required.
- 7.6 All adverse effects of currency exchange losses, or ensuing from late payment or non-payment, shall be at the expense of the Buyer/Customer, even if the Buyer/Customer complied with its payment obligation in a timely manner under the rules applicable in its home country but circumstances or measures outside the control of the Buyer/Customer caused the transfer to take place in a manner that was detrimental to the Seller.
- 7.7 If the Buyer/Customer fails to pay on time, the Seller shall be entitled to demand payment in cash before delivery of the goods for each of the remaining deliveries or a guarantee of timely payment, to cancel the Contract entirely or in part, or to suspend the further performance of the order until all payable invoice amounts – including late payment interest – have been settled, without the Seller being obliged to pay any compensation.
- 7.8 If the financial position of the Buyer/Customer worsens significantly after the Contract has been entered into but before delivery of the goods, the Seller shall be entitled to refrain from further performance of the Contract either entirely or in part or to demand amendment of the terms and conditions of payment, without being obliged to pay any compensation.

- 7.9 Without prejudice to the Seller's right to compensation for damages including loss of profit and costs incurred, if the Buyer/Customer is declared bankrupt/insolvent, is granted a moratorium/suspension of payments, or begins the process of winding up or selling its company, or if its goods or any part thereof are subject to an attachment order, the Seller shall be entitled – regardless of any arrangement or the non-expiry of payment deadlines – to take back goods already delivered or its receivable shall be immediately due and payable, or the Seller shall have the right to terminate the Contract, including in respect of only that part of the Contract that has not yet been performed, by notification and without recourse to the courts.
- 7.10 If the Buyer/Customer is in breach of one or more of its obligations, all reasonable costs incurred to obtain an out-of-court settlement shall be at the expense of the Buyer/Customer. The extrajudicial collection costs must be at least €200 and must amount to at least 15% of the agreed price.

Article 8 Complaints

- 8.1 The Buyer is obliged to examine the items, or to have them examined, as soon as or at least within as short a period as possible after they are delivered. This examination shall include a check by the Buyer to ensure that the quality and quantity of the items are as agreed, or at least meet the requirements applicable in normal business transactions.
- 8.2 Goods collected from the Seller's warehouses or factory by or on behalf of the Buyer/Customer shall be deemed to have been checked and accepted by or on behalf of the Buyer/Customer.
- 8.3 Complaints may only be lodged in relation to visible or otherwise noticeable defects if the Buyer provides the Seller, within 15 working days of delivery, with as precise a written statement as possible of the nature of and the grounds for the complaint with the relevant invoice number and/or the relevant article number(s) and/or a description of the articles that are the subject of the complaint. After the expiry of the aforementioned deadline the Buyer/Customer shall be deemed to have accepted the items unconditionally.
- 8.4 Defects that are not visible or otherwise noticeable that only become or may only become apparent when the item is used (= hidden defects) shall be reported, within 15 working days of their discovery, by providing the Seller with as precise a written statement as possible of the nature and grounds for the complaint and the relevant invoice number and/or the relevant article number(s) and/or a description of the articles that are the subject of the complaint.
- 8.5 Rights to submit complaints may only be exercised in respect of items that are still in the condition in which they were delivered, except where the complaint relates to hidden defects.
- 8.6 Minor anomalies in relation to quality, quantity, width, colours, finish, size, finishing, etc. that are considered acceptable in the trade or that are unavoidable for technical reasons shall not constitute grounds for a complaint.
- 8.7 In the event of a complaint, the Buyer/Customer shall be obliged to give the Seller the opportunity to investigate the alleged defective nature of the item, in the absence of which opportunity all rights to lodge a complaint shall lapse.
- 8.8 If the Seller deems the complaint to be justified, the Seller shall have the right to repair the items that are the subject of the complaint or to replace those items with other items in accordance with the order (right of replacement). Repair or replacement shall take place within a reasonable period of no more than 15 working days after the Seller has determined that the Buyer/Customer was justified in exercising its right to lodge a complaint.
- 8.9 If repair or replacement as referred to in 8.8 is not possible or is not possible in a timely manner, the Seller shall pay the Buyer/Customer compensation of no more than the amount invoiced for the item, under the obligation of the Buyer/Customer to return the already delivered items at issue, as quickly as possible and at the expense and risk of the Seller, to the address indicated by the Seller and in the manner indicated by the Seller. The Seller shall not pay compensation for consequential damage.
- 8.10 Goods may not be returned unless they are preceded or accompanied by the written explanation of the complaint referred to in 8.3 and 8.4. The costs of return consignments that are unfounded and/or not notified in advance shall be at the expense of the Buyer. The costs of well-founded return consignments, on the other hand, shall be at the expense of the Seller. The Seller may store the items concerned in its own custody or in the custody of third parties at the expense and risk of the Buyer. The Seller's itemised breakdown of costs in relation to unauthorised return consignments and measures taken by the Seller as a result thereof shall be binding on the Buyer barring evidence to the contrary. The Buyer shall be obliged to use

due care when packing and dispatching return consignments and shall also take out insurance to cover those returns. The Buyer shall be liable for damages sustained as a result of its failure to act.

- 8.11 The exercising of a right to lodge a complaint, whether or not the complaint is justified, shall have no effect on the obligations (payment and any other obligations) of the Buyer/Customer.

Article 9 Liability

- 9.1 The Seller shall only be liable for damage sustained by the Buyer/Customer if said damage is directly and exclusively a consequence of a failure attributable to the Seller. Any liability on the part of the Seller for indirect damage, consequential damage, loss of profits, lost savings, a reduction in goodwill, losses due to business interruption, or damage due to the exceeding of a deadline is therefore excluded.
- 9.2 The extent to which the Seller is liable to pay compensation shall be limited to the amount actually paid out to the Seller by its insurer under the applicable insurance policy. The following restrictions shall also apply:
- damage caused by wilful misconduct or gross negligence on the part of auxiliary persons shall not be eligible for compensation;
 - damage caused by a third party engaged by the Customer shall not be eligible for compensation;
 - the amount to be paid by the Seller in compensation for damages shall never be more than the amount of the invoiced and paid principal sum excluding VAT for the delivery concerned.
- 9.3 Claims for compensation shall not be considered unless the Buyer/Customer informs the Seller in writing about the failure resulting in the damage as soon as is reasonably possible, but in any event within 15 working days after the Buyer/Customer discovered or could have reasonably been expected to discover the failure, and unless the Buyer/Customer does everything that it can reasonably be expected to do in order to limit the damage.
- 9.4 The Buyer/Customer shall guarantee the correctness and completeness of and be responsible for the information provided by the Buyer/Customer to the Seller. The Seller shall never be liable for damage sustained by the Buyer/Customer as a consequence of incorrect or incomplete information provided by the Seller.

Article 10 Force majeure

- 10.1 Force majeure on the part of the Seller or the third parties engaged by the Seller shall postpone its obligations under the Contract for as long as the force majeure continues, without the Seller being obliged to pay any compensation. 'Force majeure' shall be understood to mean any circumstance independent of the will of the Seller or the third parties engaged by the Seller that temporarily or permanently prevents compliance with the Contract. Said circumstances shall include but not be limited to strike action, war, power failure, traffic congestion, severe weather conditions and problems at suppliers to the Seller and/or with the Seller's own transport or transport provided by third parties.
- 10.2 The Seller may postpone compliance with the obligations under the Contract for the duration of the force majeure. In such a case, the parties shall consult with each other with a view to changing the agreed products, price, delivery, delivery deadlines and/or payment. If this period of force majeure lasts for longer than three months, each of the parties shall be entitled to terminate the Contract without any obligation to pay compensation to the other party.

Article 11 Intellectual property

- 11.1 All intellectual property rights, including in any event patent rights, trademark rights, design rights and copyright, attached to the goods and/or services, designs, know-how and information supplied shall be vested exclusively in the Seller. The Buyer/Customer shall acquire only rights of use and powers allocated in the Contract or under these General Terms and Conditions. If the Buyer/Customer instructs the Seller to produce multiple copies or reproduce an object that is protected by any intellectual property right, the Buyer/Customer shall declare with the instruction that it does not constitute an infringement of the aforementioned rights of persons other than the parties. The Buyer/Customer shall indemnify

the Seller, at law and otherwise, against all consequences, including claims by persons other than the parties, whether financial or otherwise, ensuing from the production of multiple copies or reproduction of the object.

- 11.2 The Buyer/Customer is aware that the know-how made available by the Seller includes confidential information and business secrets of the Seller. Without prejudice to the provisions of Article 12 of these General Terms and Conditions, the Buyer/Customer hereby undertakes to maintain the confidentiality of this know-how, not to make it known to or give for use to any persons other than the parties and to use it for the purpose for which it was made available to the Buyer/Customer. In this context, 'persons other than the parties' shall also include all persons working in the Buyer's/Customer's organisation who do not necessarily need to use the know-how. The Buyer/Customer is not permitted to remove from the products and/or services delivered or from the know-how, or to amend, any indication of intellectual property – in the broadest sense of the term – including indications regarding the confidential nature and non-disclosure of the know-how.
- 11.3 If the Buyer/Customer fails to comply with the provisions of paragraphs 1 and 2 of this article, the Buyer/Customer shall immediately forfeit a due and payable fine of at least five thousand euro (€5,000) per breach and per day that the breach persists, without prejudice to the other rights accruing to the Seller, including the right to full compensation and/or compliance.

Article 12 Non-disclosure

- 12.1 The parties shall guarantee to each other that all information of a confidential nature exchanged in relation to the Contract – including the entering into of the Contract – shall remain secret, especially designs, know-how, documentation, photographs, drawings, visual and audio recordings and the like.
Information as referred to in the previous sentence of this paragraph shall be regarded as confidential, in any event if it has been classified as such by one of the parties.
- 12.2 Without prior written consent from the Seller, the Buyer/Customer is not permitted to show to any persons other than the parties, make public, copy, produce multiple copies of, distribute, cooperate with publications in relation to, or otherwise use text and/or images, including but not limited to designs, know-how, documentation, photographs, drawings and visual and audio recordings as referred to in paragraph 1 of this article, in any way or using any medium whatsoever.
- 12.3 If the Buyer/Customer fails to comply with the provisions of paragraphs 1 and 2 of this article, the Buyer/Customer shall forfeit to the Seller an immediately due and payable fine of ten thousand euro (€10,000) per breach and five thousand euro (€5,000) per day that the breach persists, without prejudice to the other rights accruing to the Seller, including but not limited to the right to full compensation and/or the right to demand compliance.

Article 13 Termination

- 13.1 If the Buyer/Customer fails to fulfil any obligation, is declared bankrupt/insolvent or granted a moratorium/suspension of payments, the Seller shall have the right to terminate the Contract immediately and unilaterally, either in its entirety or in part, without notice of default or recourse to the courts, without the Seller being obliged to pay any compensation to the Buyer/Customer and without prejudice to the Seller's right to claim compensation for damages, loss of profit and collection charges. The cancellation shall be conducted in writing.

Article 14 Applicable law and competent court

- 14.1 Contracts between the Seller and the Buyer/Customer shall be subject to Dutch law.
- 14.2 The applicability of provisions from any international convention or treaty, including the Vienna Sales Convention, is expressly excluded to the extent that the parties have the power to do so.
- 14.3 All disputes in relation to the Contract and/or these General Terms and Conditions, or the interpretation thereof, shall be resolved by the competent court in Almelo, the Netherlands.

Article 15 **Location**

15.1 These Terms and Conditions have been filed with the District Court in Almelo, the Netherlands and a copy may be obtained on request.

Article 16 **Other provisions**

16.1 In the event that a translation of these Terms and Conditions is sent to a Buyer/Customer, the original Dutch text shall still prevail.

16.2 'Width of textiles' shall always be understood to be the width including the selvage.