

GENERAL TERMS AND CONDITIONS

Autohandel Gebroeders Heinhuis v.o.f.
Darwin 16 in (7609 RL) Almelo

filed on 01-03-2019 at the District Court of Overijssel under number 09/2019.

Clause 1 Definitions

In these General Terms and Conditions the following definitions apply:

'Heinhuis':	the general partnership Autohandel Gebroeders Heinhuis;
'Counterparty':	any party who enters into an agreement with Heinhuis or with whom Heinhuis is negotiating about entering into an agreement;
'Agreement':	the agreement to supply goods and/or to provide services.
'Goods':	the vehicles and/or parts of vehicles forming part of the agreement;

Clause 2 Applicability of these Conditions

These Conditions are applicable to all pre-contractual legal relationships whereby Heinhuis acts as the seller, supplier of goods or service provider. The applicability of any general conditions used by the Counterparty are hereby explicitly rejected.

Clause 3 Quotations and formation of Agreements

1. All quotations and offers by Heinhuis are without any obligation unless the offer includes a period for acceptance. A quotation or offer is cancelled if the product to which the quotation or offer relates has in the meantime become no longer available.
2. Heinhuis cannot be held to its quotations or offers if the Counterparty can reasonably understand that the quotations or offers or any part of them include an obvious error or mistake.
3. The prices stated in a quotation or offer are excluding VAT and other government levies, any costs to be incurred in connection with the agreement including travelling and accommodation expenses, shipping and administrative costs unless otherwise indicated.
4. If the acceptance deviates (whether or not on minor points) from the offer included in the quotation or the offer, Heinhuis will not be bound by it. The Agreement will then not be formed in accordance with this different acceptance, unless otherwise indicated by Heinhuis.
5. Offers or quotations are not automatically applicable to future orders.

6. Any different acceptance of the offer by the Counterparty is considered as a complete new offer to Heinhuis.

Clause 4 Delivery

Unless otherwise agreed, delivery will be Ex Works. The delivery will take place immediately after the agreed purchase price has been received by Heinhuis. The Counterparty is obliged to take receipt of the purchased Goods at the latest within seven days after delivery. If the Counterparty does not take receipt of the Goods within the said period or refuses to take delivery of the Goods or is negligent in providing information or instructions necessary for the delivery, Heinhuis can dissolve the Agreement and consider the down payment as compensation.

Clause 5 Delivery date

An agreed delivery date does not constitute a deadline unless explicitly agreed otherwise. The Counterparty must send a written notice of default to Heinhuis and provide a reasonable period for delivery. If Heinhuis remains in default of delivery on time, the Counterparty will be entitled to dissolve the Agreement. The Counterparty does not have the latter right if he is in default.

Clause 6 Suspension and dissolution of the Agreement

1. Heinhuis is entitled to suspend the performance of the obligations or to dissolve the agreement if:
 - the Counterparty does not perform, not fully perform or not perform in a timely manner the obligations under the Agreement;
 - circumstances come to the notice of Heinhuis after the agreement has been formed which give good reason to fear that the Counterparty will not fulfil his obligations;
 - on entering into the Agreement the Counterparty was requested to furnish security for the performance of his obligations under the Agreement and this security has not been forthcoming or is insufficient;
 - in the event of a bankruptcy, a moratorium or debt rescheduling arrangement.
2. Moreover, Heinhuis is entitled to dissolve the agreement if circumstances occur which are of such a nature that performance of the agreement is impossible or if circumstances occur otherwise which are of a nature such that non-amended continuation of the Agreement cannot reasonably be required from Heinhuis.
3. If the agreement is dissolved the claims arising from the dissolution will become immediately due and payable. If Heinhuis suspends the performance of the obligations, it will retain its rights under the law and pursuant to the Agreement.
4. If Heinhuis decides to suspend or dissolve the Agreement it will not be bound in any way whatsoever to compensate losses and costs caused by it in any way whatsoever.

5. If the Counterparty can be blamed for Heinhuis dissolving the agreement, the Counterparty will be obliged to compensate Heinhuis for the losses (such as: storage costs, transport costs and lost profits) which Heinhuis suffers directly or indirectly by this as a result of the dissolution. Notwithstanding the foregoing the Counterparty will in any event owe a penalty of 10% of the agreed purchase price which penalty is immediately due and payable without any further notice of default.
6. If the Counterparty does not fulfil his obligations arising from the Agreement, Heinhuis will be entitled to dissolve the Agreement immediately and with immediate effect without any obligation on its part to pay any damages or compensation whereas on the contrary the Counterparty will be obliged to pay damages or compensation.

Clause 7 Warranty and liability

1. Details with regard to what is offered such as characteristics, colour, measurements as well as details on the website, in printing matter, drawings and illustrations provided by Heinhuis in the offer, are not binding on it and are provided in good faith.
2. On entering into the purchase agreement the Counterparty is deemed to be aware of all the specifications of the Goods purchased which are relevant to him.
3. Heinhuis does not warrant any hidden defects or the life of the Goods sold after their delivery.
4. The Counterparty is allowed to test the Goods comprehensively before the purchase.
5. The Counterparty accepts the Goods purchased in the condition as he finds it at the time of delivery, including any known and hidden defects.
6. After having received the Goods, the Counterparty can no longer invoke any defects of the Goods.
7. Exchange of Goods purchased is not possible unless agreed by Heinhuis.
8. Heinhuis will not give any warranties in any sense whatsoever on the Goods it has sold and does not accept any liability unless there is intention or gross negligence.
9. If Heinhuis would be liable for any loss, its liability will be limited to €15,000, in any event to that part of the Agreement to which the liability relates.
10. The liability of Heinhuis is in any event limited at all times to the amount of the payments made by its insurer, should the occasion arise.
11. Heinhuis will never be liable for indirect loss, but at most for direct loss.
12. The term 'direct losses' means exclusively the reasonable costs involved in determining the cause and the extent of the loss insofar as the determination relates to loss within the sense of these provisions, any reasonable costs incurred by having the defective performance of Heinhuis remedied in order to conform to the Agreement insofar as they can be attributed to Heinhuis, as well as reasonable costs incurred to prevent or restrict the loss insofar as the Counterparty demonstrates that these costs resulted from restricting the direct loss as meant in these General Terms and Conditions.

13. Heinhuis will never be liable for indirect loss including consequential loss, lost profits, missed savings and loss caused by operational delays.

Clause 8 Risk transfer

The risk of loss, damage or decrease in value will transfer to the Counterparty at the moment that the Goods have been supplied to the Counterparty.

Clause 9 Retention of title

1. The Goods delivered by Heinhuis remain the property of Heinhuis until the Counterparty has fulfilled the obligations under the purchase agreement entered into with Heinhuis.
2. If the Counterparty does not fulfil his obligations or if there is reasonable fear that he will not fulfil them, Heinhuis will be entitled to remove the delivered Goods to which the retention of title is attached as meant in paragraph 1 from the Counterparty or from third parties holding the goods for the Counterparty, or to have them removed. The Counterparty is obliged to cooperate with this fully on pain of a penalty of 10% of the amount payable by him for each day.
3. If any third parties want to establish or exercise any right on the Goods delivered covered by the retention of title, the Counterparty will be obliged to inform Heinhuis of this immediately.
4. The Counterparty undertakes at the first request of Heinhuis:
 - to take out insurance on the Goods delivered under the retention of title covering them against damage by fire, explosion and water as well as against theft, to maintain this insurance and to provide this insurance policy to Heinhuis for inspection;
 - to pledge to Heinhuis all claims by the Counterparty on the insurers with regard to the Goods delivered under the retention of title in the manner prescribed in Section 3:239 of the Dutch Civil Code;
 - to pledge to Heinhuis the claims which the Counterparty will acquire on his buyers when he resells the Goods delivered by Heinhuis under the retention of title, in the manner prescribed in Section 3:239 of the Dutch Civil Code;
 - to mark the Goods delivered under the retention of title as the property of Heinhuis;
 - to cooperate in other ways with all reasonable measures which Heinhuis wants to take to protect its right of ownership with regard to the Goods and which do not unreasonably interfere with the Counterparty's normal business operations.

Clause 10 Payment

1. Payment must take place within 7 days after the invoice date,
 - either by means of a legal tender at the office of Heinhuis;
 - or by transfer of the amount payable to the bank account number of Heinhuis.

After 7 days have elapsed after the invoice date, the Counterparty will be in default without any further notice of default; from the moment of default the Counterparty will owe 2% interest per month on the amount due and payable, whereby a part of a month is considered as a whole month.

2. In the event of a winding-up, bankruptcy or moratorium of the Counterparty or when the application of the debt rescheduling scheme is declared applicable to the Counterparty, the obligations of the Counterparty will become immediately due and payable.
3. Any disputes between the buyer and the seller regarding quality or complaints lodged for any other reasons by the Counterparty, do not give the purchaser the right to suspend payment.

Clause 11 (Collection) costs

If the Counterparty does not or not within due time fulfil one of his obligations, apart from the agreed price the following will be at the expense of the Counterparty:

- all the costs in order to obtain extrajudicial fulfilment, including the costs of formulating and sending reminders, of proposing a settlement and making enquiries. In any event any Counterparty who cannot be considered as a consumer will owe 10% of the agreed purchase price. For consumers the extrajudicial collection costs are calculated on the basis of the Reimbursement for Extrajudicial Collection Costs Decree. If Heinhuis has incurred higher costs, these will also be eligible for reimbursement.
- all costs in order to obtain fulfilment in court.

Clause 12 Force majeure

1. The term force majeure means circumstances preventing the fulfilment of the obligation and which are not attributable to Heinhuis.
They include in any event (if and insofar as these circumstances make fulfilment impossible or render them unreasonably difficult): strikes in companies other than that of Heinhuis, unforeseeable delays by suppliers or other third parties on which Heinhuis is dependent and general transport problems.
2. Heinhuis shall also be entitled to appeal to force majeure if the circumstance impeding (further) fulfilment commences after Heinhuis should have fulfilled its obligation.
3. During the force majeure situation the delivery and other obligations of Heinhuis will be suspended. If due to force majeure the period during which fulfilment of the obligations by Heinhuis is impossible lasts longer than two

months, both parties will be entitled to dissolve the Agreement without there being any obligation to pay compensation in that case.

4. If on the occurrence of a force majeure situation, Heinhuis has already partly fulfilled its obligations and can only partly fulfil its obligations, it will be entitled to invoice separately the part already delivered or available and the Counterparty will be obliged to pay this invoice as if it related to a separate contract. However, this does not apply if the part already delivered or available has no independent value.

Clause 13 Indemnity

1. The Counterparty indemnifies Heinhuis against all claims by third parties which are directly or indirectly, circumstantially or immediately connected to the performance of the Agreement or which arise from the law.
2. If Heinhuis would be sued on that account by third parties, the Counterparty will be obliged to assist Heinhuis both in as well as out of court and immediately to do everything that can be expected of it in that event. Should the Counterparty fail to take adequate measures, Heinhuis is entitled to take these measures itself without any notice of default being required. All costs and losses on the part of Heinhuis and third parties caused by this, will be fully at the expense and risk of the Counterparty.

Clause 14 Applicable law and the competent court

1. Dutch law applies exclusively to all (pre-contractual) legal relationships in which Heinhuis is a party, even if a contractual obligation is fully or partially executed abroad or if the party involved in the legal relationship is domiciled abroad.
2. The court in the place where Heinhuis has its registered office has exclusive jurisdiction to hear disputes unless otherwise provided for by law. Nevertheless Heinhuis will be entitled to submit the dispute to the court having jurisdiction according to the law.
3. The provisions of the Vienna Sales Convention are not applicable, neither is any future international arrangement with regard to purchasing movable goods of which the legal effect can be excluded by the parties.
4. Insofar as is possible Heinhuis will observe the applicable privacy rules.

Clause 15 Listing location and amendments to Conditions

1. These Conditions are listed at the District Court of Overijssel, based in Almelo.
2. The Dutch text of the General Terms and Conditions is at all times determinant for their interpretation.