

General terms and conditions of sale, supply and payment

Hammesfahr Holland B.V., registered in the Commercial Register under number 05025027 in Enschede, with its principal place of business at De Sluis 14, 7681 KB Vroomshoop (NL).

Warehouse: De Sluis 14, 7681 KB Vroomshoop (NL).

These general terms and conditions are filed with the Chamber of Commerce – Enschede office in Enschede under number: 05025027.

Article 1: Definitions of terms

1. Hammesfahr is taken to mean in these General Terms and Conditions: Hammesfahr Holland B.V.
2. The purchaser is also taken to mean in these General Terms and Conditions those on whose assignment and on whose expense services are provided, as well as those with whom purchase agreements for the delivery of products are concluded.

Article 2: General/Applicability

1. These terms and conditions apply, with the exclusion of the General Terms and Conditions of purchasers, to all offers, purchase agreements and deliveries of products and to all offers and agreements such as the provision of services between Hammesfahr and its purchasers.
2. Any purchase conditions or other terms and conditions will only form part of an agreement insofar as these terms and conditions or clauses are expressly and in writing accepted by Hammesfahr.
3. The purchaser with whom Hammesfahr has contracted in the past on (different) General Terms and Conditions agrees to the applicability of these General Terms and Conditions to later agreements between the purchaser and Hammesfahr.

Article 3: Offers / Industrial property

1. All offers in price lists, circular letters, adverts, order confirmations, letters, wherever published or howsoever made, are always without obligation.
2. All industrial and intellectual property rights, as well as copyright, remain vested in Hammesfahr.

Article 4: Agreement

1. An agreement comes into effect at the time when the purchaser places an order through the webshop, or by telephone or in writing, except for when Hammesfahr informs the purchaser, within 48 hours from the placing of the order, by telephone, by email and/or in writing that Hammesfahr does not accept the order.

Article 5: Prices

1. All prices are excluding VAT and expressed in Euros (€) unless expressly stated otherwise.
2. All prices are based in the price lists applicable at the time of the coming into effect of the agreement, or as the case may be on later price quotes given by Hammesfahr by means of a computerised system, or by email or in writing.
3. If, after the concluding of the agreement one or more cost factors increase, Hammesfahr will be entitled to charge for this in the price.

Article 6: Payment

1. Payments will be made within 30 days after the invoice date, unless Hammesfahr requires payment in cash on delivery. Hammesfahr will be entitled to require cash payment if the purchaser is in default with regard to payment of any other claim of Hammesfahr against the purchaser.
2. If the purchaser has not paid in a timely manner or not in full or if direct debit collection was also not possible for whatsoever reason, the purchaser will be in default by operation of law without the requirement of further notice of default. In that case all claims of Hammesfahr against the purchaser, which these General Terms and Conditions apply to, will be immediately due and payable. The purchaser will in that case owe an annuity to Hammesfahr of 3% above the 3 monthly Euribor interest

applied at that time by the Netherlands Bank (the Netherlands Bank), with a minimum of 8.5%, whereby a part of a month will apply as a full month.

3. All the costs related to the collection, in particular the extrajudicial costs, will be at the expense of the purchaser. The extrajudicial costs are set out at an amount of at least 15% of the amounts due on the principal sum, with an absolute minimum of € 150.
4. Each payment made by the purchaser will firstly serve to settle the interest owed and thereupon to settle the costs related to the claim, with the exception of the judicial costs. Only after the payment of these amounts will any payment by the purchaser serve to settle the claim outstanding on the principal sum whereby the claims which have been outstanding for the longest will be settled first.
5. The purchaser will not be entitled to apply setoff with regard to amounts, which Hammesfahr charges pursuant to an agreement in existence between them.
6. Hammesfahr will always be entitled, also during the performance of the agreement, to suspend the fulfilment of its obligations until the purchaser on request from Hammesfahr has provided security for the fulfilment of the payment obligations of the purchaser. In addition Hammesfahr will be entitled to also require security for future deliveries to the purchaser.

Article 7: Retention of title

1. The ownership of all products delivered by Hammesfahr to the purchaser will remain vested in Hammesfahr for as long as the purchaser has not yet paid the claims of Hammesfahr with regard to a purchase agreement, or on whatsoever basis, as long as the purchaser has still not fulfilled the activities carried out or to be carried out under any other agreement and for as long as the purchaser has not paid the claims of Hammesfahr due to failure in the fulfilment of such obligations, including the claims with regard to financial penalties, interest and costs. In that case Hammesfahr will be entitled to repossession of the delivered products, and Hammesfahr will be entitled to enter the site of the purchaser to personally collect the products concerned from the shop and the warehouse of the purchaser. Packaging will never become the property of the purchaser.
2. The purchaser is permitted to sell the products delivered subject to retention of title to third parties, in the context of the usual exercise of its business. The purchaser is not entitled to establish a right of pledge or a nonpossessory pledge on the products delivered by Hammesfahr.
3. In addition to the retention of title referred to in article 7.1 the purchaser undertakes to reserve a nonpossessory pledge on first request for this purpose from Hammesfahr and insofar as necessary to establish this on the products delivered in ownership by Hammesfahr, for security of all existing and future claims of Hammesfahr on whatsoever basis.

Article 8: Delivery by Hammesfahr, delivery period, risk

1. The orders will be delivered by Hammesfahr in accordance with a delivery schedule to be made known by Hammesfahr. Hammesfahr has the right at all times to amend or adjust this schedule. Furthermore, the purchaser will follow the instructions that are given by Hammesfahr with regard to the manner in which orders must take place. If the purchaser derogates from the manner of ordering set out by Hammesfahr the (extra) costs incurred due to this will be charged on to the purchaser.
2. Agreed delivery dates are never to be regarded as final deadlines, unless agreed otherwise in writing. Hammesfahr and the purchaser will enter into consultation if exceeding of any period is pending. In the event of delivery not being in a timely manner, Hammesfahr must be given notice of default with due regard to a reasonable period.
3. Delivery takes place EX Works (EXW) from our warehouse in Vroomshoop - the Netherlands, unless agreed otherwise with the purchaser. Each of the trading conditions agreed with the purchaser in accordance with the International Commercial Conditions (INCOTERMS) must be interpreted and applied in accordance with the Incoterms 2010, or the most recent version thereof.
4. Without prejudice to the provisions of subclause 3 of this article, the purchaser will bear the risk, immediately after delivery, of all direct and indirect damage that is caused to or by the delivered products or parts thereof.

Article 9: Delivery by third party supplier

1. Hammesfahr will be entitled to make use of third party suppliers to be designated by Hammesfahr. Hammesfahr will exercise due care when selecting the third party supplier.
2. The third party supplier will deliver the products to be paid for through Hammesfahr directly to the purchaser. As and when necessary the purchaser can order the products of the third party supplier directly from Hammesfahr. In the event of direct deliveries, payment to Hammesfahr will continue to take place.
3. Hammesfahr will not be liable for shortcomings on the part of the third party supplier and/or defective deliveries by the third party supplier. Hammesfahr will assist the purchaser as much as possible during the submission of any claims for damages that the purchaser might have against the third party supplier, in the event of shortcomings on the part of the third party supplier and/or defective deliveries by the third party supplier.

Article 10: Complaints about the products delivered by Hammesfahr / packaging

1. The purchaser must, at delivery and upon taking delivery of the products delivered by Hammesfahr, inspect the delivery to ensure it is in accordance with the order or the assignment from the purchaser.
2. Complaints concerning visible defects and/or shortage or surplus of delivery must be reported forthwith, but no later than within 24 hours after the delivery date, to Hammesfahr. The reports as described must be reported as much as possible through the computerised system delivered and/or designated by Hammesfahr. Other complaints concerning the delivered products will only be dealt with by Hammesfahr if they were brought to the attention of Hammesfahr within 24 hours after the purchaser could reasonably have discovered the defect. After the expiry of this period the purchaser will be deemed to have found the delivered goods to be in good order.
3. If the purchaser finds more than three shortages of delivery in one dispatch Hammesfahr will deliver the shortages free of charge within 48 hours after the reporting thereof. Exceptions to this are shortages of delivery as a result of the failure to deliver on the part of the supplier and/or manufacturer to Hammesfahr for whatsoever reason.
4. Any rights on the basis of this article will only apply to the first purchaser. The purchaser does not have the right to suspend payment for the delivered goods on the basis of apparent defects; if the complaint appears to be well-founded repayment can take place later.

5. Returning of delivered goods by the purchaser can only take place if approved and with the express permission from Hammesfahr.

6. Exchange of items is exclusively and solely possible if this exchange is required following a demonstrable and attributable incorrect action on the part of Hammesfahr. In that event items will be exchanged for the correct item during the next dispatch, provided that these items are offered in sealed, original factory packaging as delivered in.

Article 11: Force majeure

1. Hammesfahr will not be obliged to the fulfilment of any obligation if Hammesfahr is prevented from this as a result of a circumstance not attributable to its fault, and which Hammesfahr is not accountable for by law, a legal act, or according to generally accepted standards.
2. If Hammesfahr, due to force majeure, or due to other exceptional circumstances, such as inter alia but not limited to, industrial actions, interruption in the supply of products, industrial actions in harbours and fire, either on the part of Hammesfahr or on the part of its suppliers, is not capable to fulfil, or not capable to fulfil in a timely manner, its obligations on the basis of the agreement, Hammesfahr will have the right to perform the agreement within a reasonable period, or - if performance within a reasonable period is not possible - to declare the agreement to be terminated wholly or in part.
3. In the aforesaid event the purchaser will not be entitled to termination of the agreement.

Article 12: Termination

1. If the purchaser does not, not in a timely manner, or not properly, fulfil its obligations ensuing from the agreement, Hammesfahr will be entitled, without further notice of default and without judicial intervention and without being held liable for any compensation, to suspend the delivery of the products and/or to terminate the purchase agreement concerned by means of notice in writing to the purchaser, with immediate effect, all this without prejudice to all other rights accruing to Hammesfahr.
2. If, at the time of the termination, the purchaser has already received goods and services for the performance of the agreement, the agreement will only be terminated partially and exclusively for that part which has still not been performed by Hammesfahr. Amounts which were invoiced by Hammesfahr prior to the termination, related to that which it has already properly executed or delivered for the performance of the agreement, continue to be fully owed and will be immediately due and payable at the time of the termination.
3. All claims of Hammesfahr will be immediately due and payable in full if the purchaser does not fulfil its obligations, or in the event of its insolvency or its moratorium, or if the purchaser, due to whatsoever cause, loses, or might lose, the power of disposal over its assets or a part thereof. In that event Hammesfahr will have the right to terminate or suspend, wholly or in part, the agreement with immediate effect and without judicial intervention, by means of a notice in writing to the purchaser, without prejudice to the right of Hammesfahr to compensation.

Article 13: Liability

1. Hammesfahr accepts statutory obligations of compensation insofar as the purchaser demonstrates by all lawful means and proves that the damage is caused by gross negligence or omission on the part of Hammesfahr.
2. The liability for damage ensuing from article 13.1 is expressly limited to an amount to the level of the invoiced amount in the principal sum related to the delivered products and/or the provided services.
3. Each farther-reaching liability on the part of Hammesfahr for damage, including but not limited to liability for employees and contractors or agents, is excluded, arisen on whatsoever basis, including all direct and indirect loss, such as consequential damage and trading loss. Furthermore the purchaser indemnifies Hammesfahr against all claims by third parties with regard to any damage suffered or to be suffered, all this with due regard to the provisions of this article.

Article 14: Other obligations of the purchaser

1. The purchaser is obliged to immediately inform Hammesfahr in writing if an application for the declaration of insolvency or moratorium of the purchaser is submitted, or if the purchaser, due to whatsoever cause, loses or might lose the power of disposal over its assets or a part thereof.

Article 15: Amendments

1. These General Terms and Conditions can be amended by Hammesfahr, but these amendments will not apply toward the purchaser until after the purchaser has been informed of these amendments.

Article 16: Applicable law and disputes

1. The law of the Netherlands exclusively applies to the agreements between Hammesfahr and the purchaser.
2. All disputes between Hammesfahr and its purchasers will only be submitted to the court with competent jurisdiction in the district where Hammesfahr is established or, all this at the discretion of Hammesfahr, to the court with competent jurisdiction in the place of business of the buyer.