

Sales, Delivery and Payment Conditions of Lisman Vorkheftrucks NV, IJsselstein, the Netherlands

Clause 1 Applicability

1. All sales and purchase agreements shall be exclusively governed by the conditions set out hereinafter.
2. Varying provisions shall only apply if the buyer and seller have agreed on such provisions in writing, and only for the particular agreement for which such provisions were agreed upon; in all other cases the following conditions shall prevail.
3. Insofar as applicable, in these conditions of sale the term machines shall also be understood to mean delivered installations, devices, parts, accessories and tools, as well as any items related thereto, in the broadest sense of the word.
4. The buyer's general terms and conditions shall not apply and are expressly declined.
5. The sales agreement shall be entered subject to termination. In the case that the full payment has not been received within six weeks after invoice / order confirmation date, this agreement will be null and void.

Clause 2 Offers

1. All offers are without commitment.
2. The seller may assume that all data, drawings, etc. furnished to the seller by the buyer are correct and shall base its offer thereon.
3. The seller shall not be liable for errors and deviations in pictures, indications of measurements and weights, which occur in price lists and/or upon making offers and/or order confirmations.
4. The prices mentioned in the offers are based on delivery ex-works from IJsselstein in accordance with Incoterms 2010. Prices exclude VAT and packaging material.

Clause 3 Complaints

1. Unless otherwise agreed in writing, the seller shall not handle complaints regarding delivered used machines. The provisions of paragraphs 2 and 3 of this clause pertain solely to new goods.
2. Without prejudice to the provisions of clause 6, the seller is not obliged to handle complaints received later than fourteen days after the date of the seller's invoice or more than eight days after receipt of the goods by the buyer.
3. A complaint about delivered goods shall not have any effect on previous deliveries of goods nor goods yet to be delivered, even if such goods have been or are to be delivered under the same sales agreement.

Clause 4 Assembly and suchlike

1. The purchase price does not include costs of assembly and putting into operation.
2. If our fitter is regularly unable to assemble and put into operation the delivered goods, due to circumstances outside the control of the seller, the ensuing costs shall be at the buyer's expense.
3. The seller shall, except for its responsibilities set out elsewhere in these conditions, never be liable for any indirect loss as a result of, for instance, business closing down, delays, malfunctions or any other consequential loss, whatever its cause or nature. Moreover, the seller shall never be liable for any direct or indirect loss caused to or by the functioning or non-functioning of the goods delivered or processed by the seller, or caused directly or indirectly by relevant personnel in its employ to goods, persons or any other parties or matters.

Clause 5 Liability

1. The seller shall be liable for any loss suffered by the buyer as a direct and sole consequence of a shortcoming attributable to the seller. Only the loss for which the seller is insured or should reasonably have been insured shall be eligible for compensation.
2. Not eligible for compensation are:
 - a. consequential loss, including for instance loss due to standstill and lost profit;
 - b. damage to goods of property held in trust; damage to goods of property held in trust is understood to mean loss caused by or during the execution of contracted work to items which are being worked on or items that are in the vicinity of where the work is being executed;
 - c. loss caused by intentional act or omission or conscious recklessness by auxiliary persons;
 - d. damage during transport, for which the seller does not assume liability.
3. The buyer indemnifies the seller against all third-party claims for product liability as a result of a defect in a product delivered by the buyer to a third party, which consisted wholly or partly of products and/or materials delivered by the seller.

Clause 6 Guarantee

1. Goods delivered by the seller are subject to the guarantee provisions mentioned on the invoice, which shall also serve as order confirmation.
2. In the event of guarantee, this entails that the seller shall repair the defects or replace the delivered goods as quickly as possible, for its own account, or that it shall credit part of the invoice, insofar as the buyer can demonstrate that the defects came to light within the guarantee provisions under (1) or were wholly or partly the result of faulty material and/or incorrect construction or processing.
3. Meeting the guarantee obligations shall serve as sole and complete compensation, and any other liability, be it for direct or indirect loss, costs and interests, of whatever nature, are expressly excluded.
4. Those parts that are subject to premature wear and tear, on account of their nature or as a result of operating circumstances, shall not be covered by the guarantee provisions, neither shall loss as a result of careless and inexperienced processing/treatment, excess load or other influences.
5. Should the buyer perform or have others perform any repairs or changes (to the delivered goods) during the guarantee period without the prior permission of the seller, the guarantee obligation of the seller shall immediately lapse. The buyer shall not be entitled to refuse payment on the grounds that the seller has not, has not yet or has not fully fulfilled its guarantee obligation.
6. If the seller replaces certain parts of goods returned to it for repair, the replaced parts shall become the property of the seller.

Clause 7 Changes

1. Changes to or cancellations of any sales agreement shall require the written permission of the seller.
2. If the buyer wishes to change or cancel the concluded agreement, the buyer shall be obliged to compensate the seller for any loss and costs resulting from such change or cancellation. The seller is always entitled to avail itself of the powers set out in Section 6:90 of the BW (Dutch Civil Code).

Clause 8 Delivery terms

1. The agreed delivery terms can only be given by approximation. Although every effort shall be made to meet the delivery terms as much as possible, the seller shall never be liable for the consequences of exceeding the delivery terms.

2. Such exceeding of the delivery terms shall not entitle the buyer to cancel the order or reception of goods, or refuse to pay for the goods, neither shall it oblige the seller to compensate the buyer in any way, nor to deliver from stock if the purchase was made based on supply from factory.

Clause 9 Force Majeure

Force majeure is understood to include all circumstances which may reasonably be expected to stand in the way of delivery or timely delivery of the purchased goods, such as non-delivery or untimely delivery to the seller by its supplier, as well as in the event the seller does not receive the goods sold to it by its supplier or does not receive them in time, in which cases the seller can elect to postpone delivery or cancel the sales agreement.

Clause 10 Price

1. The sales price mentioned by the seller is based on the seller's purchase price and other cost factors. If either of these cost price components should be increased after the order confirmation but before delivery of the goods, the seller shall be entitled to pass on such increase to the buyer.
2. Without prejudice to the general applicability of this clause, it is particularly applicable to a change of import and export duties or other duties or taxes after the order confirmation has been sent, and to a change of the exchange rate of the guilder against the foreign currency at which the seller has purchased the goods.

Clause 11 Payment

1. Without prejudice to the agreed payment conditions, the buyer shall be obliged to provide the seller, at the seller's discretion and request, with adequate security for payment. If the buyer cannot provide such security within the term set for such purpose, the buyer shall immediately be in default. In that case, the seller shall be entitled to dissolve the agreement and to recover its loss from the buyer.
2. Payment shall be effected at the seller's place of business or into an account specified by the seller.
3. During the execution of an agreement, the seller shall be entitled to postpone the fulfilment of its obligations until such time the buyer, at the seller's request and to the seller's satisfaction, has provided security for the fulfilment of its obligations ensuing from the agreement.
4. Unless otherwise agreed in writing, payment shall be in cash without discount for delivery of the goods, regardless of whether all or only part of the purchased goods have been delivered. Setting off debt shall not be permitted.
5. As long as the buyer has not paid the amount it owes, insofar as such is due and payable, the seller shall be entitled to postpone the fulfilment of its obligations.
6. The sold goods shall remain the property of the seller until the buyer has fulfilled all its obligations ensuing from or in connection with the sales agreement. Until then, the buyer is therefore not free to sell on the purchased goods, encumber them in any way, process or dispose of them in any other way without prior written permission from the seller.
7. As from the maturity date of payment, the buyer shall owe interest on the amount it owes, which interest rate shall be the legal interest for commercial transactions of the European Central Bank applicable on the maturity date, increased by 3.5%.
8. If the payment term is exceeded by more than one month, the seller shall be entitled to charge the relevant collection costs in the event it calls in appropriate persons or agencies to that end.

Clause 12 Transfer of risk

1. Upon purchase, delivery shall be "ex-works" in accordance with Incoterms 2010; the risk of the goods shall be transferred at such time the seller makes these available to the buyer.
2. Without prejudice to the provisions of 12.1, the buyer and seller may agree that the seller shall take care of transport. In that case, the risk of storage, loading, transport and unloading shall also be at the buyer's risk. The buyer can take out insurance against these risks. Commitments entered into vis-à-vis third parties shall not change the above and shall be deemed to be undertaken in the interest and at the expense of the buyer.
3. Also in the event the seller installs and/or assembles the purchased goods, the risk of the goods shall be transferred at such time the buyer makes the goods available to the seller in the seller's business premises or another agreed location.
4. In the event the purchase involves a trade-in and the buyer continues to use the goods to be traded in pending delivery of the new goods, the risk of the goods to be traded in shall remain with the buyer until such time ownership of the goods has been transferred to the seller.

Clause 13 Non-performance of the buyer

1. If the buyer fails to fulfil one or more of its obligations, if the buyer is declared bankrupt, if it files for a moratorium, if it proceeds to wind up business or if all or part of its assets are seized, the seller shall be entitled to dissolve the sales agreement or that part of it that has not yet been executed, without requiring judicial intervention, and to reclaim the delivered but unpaid goods, without prejudice to its right to compensation for loss, interest and costs.
2. In the event of non-fulfilment of any of its obligations, the buyer shall be in default by the mere expiry of the agreed term, without notice of default being required.
3. A complaint shall not defer the payment obligation.

Clause 14 Retention of title and pledge

1. After delivery, the seller shall remain the owner of the delivered goods for as long as the buyer:
 - a. fails or will fail to fulfil its obligations ensuing from this agreement or any other similar agreements;
 - b. does not or will not pay for work to be carried out pursuant to such agreements;
 - c. has not paid claims relating to non-performance of the above agreements, such as loss, penalty, interest and costs.
2. As long as the delivered goods are still subject to retention of title, the buyer shall not encumber them outside the scope of its normal business activities.
3. After the seller has invoked its retention of title, it may retrieve the delivered goods. The buyer shall give the seller access to the place where these goods are kept.
4. If the seller cannot make an appeal to its retention of title because the delivered goods have been merged, transformed or acquired by accession, the buyer shall be obliged to pledge the newly formed goods to the seller.

Clause 15 Applicable law and jurisdiction clause

1. The laws of the Kingdom of the Netherlands shall apply.
2. The Vienna Sales Convention (CISG) shall not apply, neither shall any other international rules from which exemption is permitted.
3. Disputes shall be exclusively heard by the competent civil court in the place of the seller's registered office, unless such is in contravention of mandatory rules of law. The seller may depart from this rule of jurisdiction and observe the statutory rules of jurisdiction.
4. The parties may agree to some other form of dispute settlement, such as arbitration or mediation.