

GENERAL CONDITIONS OF SALE AND DELIVERY KLEYN COMPANIES

I. GENERAL

1. These conditions shall apply to all quotations and agreements for purchase/sale of goods and/or on the instruction of Kleyn Groep B.V., with registered office in Vuren, municipality of Lingewaal, The Netherlands and its group companies Kleyn Trucks B.V., Kleyn Vans B.V., Kleyn Parts B.V., Kleyn Construction Equipment B.V. and Kleyn Services B.V., hereinafter to be referred to both jointly and individually as KLEYN, insofar as not stipulated otherwise in the quote or agreement. These terms can be quoted as AVW-KLEYN.
2. Additions or exceptions to these conditions must be agreed in writing; these additions and exceptions shall only apply for the agreement for which they are made.
3. The rights and obligations arising from agreements between KLEYN and client may not be transferred by client to third parties, except with the written consent of KLEYN.
4. The provisions of section 1 title 7 of book 7 BW (Dutch Civil Code) (order) with the exception of Article 412 shall not apply to the present legal relationship unless otherwise specifically provided in the agreement or in these conditions.

II. QUOTATIONS

All quotations shall be without obligation and shall be valid for a period of 30 days, unless otherwise agreed in writing. A quotation which contains a time-limit may nevertheless be revoked by KLEYN, even after receipt of order, provided this is done within 5 days.

III. AGREEMENTS

An agreement shall only be deemed to have been legally concluded after KLEYN has confirmed the order in writing or a start has been made on the execution of the order. The contents of the agreement shall be determined by the proposal and/or confirmation of order of KLEYN and these general conditions.

IV. PRICES

1. All price quotations and the prices which KLEYN charges are the prices applicable at the time of the quotation or of the conclusion of the agreement ex works in Vuren, excluding VAT and other costs attaching to the agreement, such as levies and tariffs.
2. Where after making a quotation a change occurs to one of the factors determining the price, KLEYN shall be entitled to adjust the prices accordingly, even where the agreement has in the meantime been concluded.
3. Price revisions of more than 10% shall give the client the right to cancel the agreement, provided this is done in writing and within seven days of receipt of our notification thereof. A cancellation as indicated above shall not give client any right to compensation for any damage whatever.

V. PAYMENT

1. Client shall be obliged to pay all invoices before delivery of the goods in question or before the work in question is carried out (payment in advance), unless otherwise agreed in writing.
2. Where invoices are not paid in cash in accordance with Article V, paragraph 1, client shall be in default simply by the passing of the agreed payment date, without any notification of default being required for this, irrespective of whether the exceeding of such payment date is the fault of client.
3. Notwithstanding the other rights accruing to it, KLEYN shall then be authorised to charge interest on the outstanding amount of 1% per month or part of a month, chargeable from the due date in question.
4. All extrajudicial and judicial costs incurred by KLEYN by virtue of a dispute with client, both as plaintiff and as defendant, shall be for account of client. The extrajudicial collection costs to be established in accordance with the collection tariff of the Netherlands Bar Association, the judicial collection costs on the actual amount paid for the proceedings by KLEYN, even where this exceeds the liquidated costs of the proceedings.
5. Incoming payments shall serve to settle the longest outstanding items - including interest and costs - even where client states otherwise in this respect.
6. In case of late payment any adverse exchange rate difference shall be for account of client. Reference dates are the due date of the invoice and the date on which it is paid.

VI. DELIVERY TIME, DELIVERY, RISK

1. The time of delivery mentioned or agreed in the quotation and/or confirmation of order shall not be regarded as a deadline, not even if this is expressly accepted by client. In case of late delivery, KLEYN shall only be in default after written notification of default. Time of delivery shall also be understood as time of repair.
2. The time of delivery mentioned or agreed shall in any case, but not exclusively, be automatically extended by the period(s) during which:
 - there is a delay in the supply and/or dispatch and/or of any other circumstance temporarily holding up the execution, irrespective of whether this can be blamed on KLEYN;
 - client defaults in one or more obligations towards KLEYN or there is a justified fear that he will default in these, irrespective of whether the reasons for this are justified or not;
 - client does not put KLEYN in a position to execute the agreement; this situation occurs among other things where client remains in default of notifying the place of delivery or making available data, goods or facilities necessary for the execution.
3. Delivery in the Netherlands shall be carried out ex works in Vuren, unless otherwise agreed in writing. All goods shall be transported for account and risk of client, even where the dispatch is made carriage paid.
4. Where KLEYN on request of client is responsible for dispatch of the goods or where the agreed parity of the ICC Incoterms lays this responsibility on KLEYN, the time, method of dispatch and dispatch route shall be its choice. Transport insurance shall only be taken out by KLEYN on the express request of client; all costs relating to this shall be for client's account.
5. Delivery shall be deemed to have taken place at the time when the goods are made available to KLEYN by client. Where client does not take the goods, they shall be stored for his account and risk or sold by KLEYN. KLEYN shall be entitled to recover its claim from the proceeds.
6. Delivery outside the Netherlands shall be carried out Ex Works (EXW) Incoterms 2000, unless one of the other Incoterms of the International Chamber of Commerce (ICC), Edition 2000, is agreed.
7. Partial deliveries shall be permitted.

VII. GUARANTEE/CLAIM

1. The goods supplied by KLEYN shall meet the specifications as set out in the corresponding purchase contract. No guarantee shall be given, unless otherwise indicated in the purchase contract.
2. Where client calls upon the guarantee given by KLEYN in the corresponding purchase agreement or makes a claim, KLEYN shall assess the guarantee or complaint and if necessary settle taking into account what is provided in the purchase contract in this respect. Guarantee claims may not be transferred to third parties.
3. On pain of claiming lapse of its right, client must notify KLEYN in writing of any complaints relating to the level of the invoiced amount, visible deficiencies in the goods delivered within 3 days after receipt or delivery, giving an accurate description of the complaints. For all other claims a period of 5 days after the defects became known or should have become known shall apply. The goods in question must be made available to KLEYN for examination upon first request.
4. Claim is not possible where:

- the goods have been used for a purpose other than that for which they are normally intended or in the opinion of KLEYN they have been used or transported injudiciously or have been repaired by client or a third party;
 - the damage has been caused by negligence of client (for example by insufficient maintenance) or by client having acted contrary to instructions, indications and advice of KLEYN;
 - client has not fulfilled his obligations towards KLEYN (both financially and otherwise).
5. Should client make a claim taking into account the provisions of this article and his claim be found to be justified by KLEYN, KLEYN shall at its discretion, replace the goods involved free of charge (after which the replaced goods shall become its property) or repair them or give a price reduction.
6. The handling of a claim shall not suspend the payment obligation of client.
7. Where apart from the cases described above consideration is given to a complaint, this shall be carried out entirely without obligation and client may not derive any rights from it.

VIII. INSPECTION

Client shall have the right, for own account, to inspect the goods before delivery at a time and place determined by KLEYN.

IX. NON-FULFILMENT/CANCELLATION/SUSPENSION

1. KLEYN shall be authorised to cancel the agreement in full or in part or to suspend the execution, with immediate effect, without judicial intervention, notwithstanding the other rights to which it is entitled (to fulfilment and/or compensation), where:

- client acts in contravention of any provision of the agreement between parties;
- client applies for suspension of payment or makes an application for adjudication of bankruptcy
- bankruptcy of client has been applied for;
- the business of client is shut down or liquidated;
- a private agreement is offered.

In these cases any claim against client shall be immediately payable, without KLEYN being held to any compensation or guarantee.

2. The provision of paragraph 1 of this article shall be applicable accordingly where client, after being invited to do so in writing, has not provided security which is suitable in the view of KLEYN within seven days.
3. In the event that the customer exceeds the term of payment and/or receipt by more than fourteen days, without being obliged to issue any further notice KLEYN is entitled to resell the goods sold to the customer, in which case the customer forfeits any down payment made to KLEYN as compensation for losses incurred, unless the customer is able to prove that the losses incurred by KLEYN are less than the down payment.

X. RESERVATION OF TITLE

1. Delivery shall only be carried out on reservation of title. This reservation shall apply with regard to claims to payment of all goods delivered or to be delivered by KLEYN to client by virtue of any agreement and/or work carried out within the framework of delivery as well as for claims for the default of client in the fulfilment of these agreements.
2. KLEYN shall be authorised in the cases mentioned in article IX to take back the goods delivered which have remained its property in accordance with the previous paragraph. Such taking back shall be deemed to be cancellation of the agreement(s) signed with client. Client shall authorise KLEYN where necessary irrevocably to remove the goods in question (have the goods in question removed) from where they are located.
3. Client shall be authorised, where and in so far as is necessary by virtue of the normal execution of his business, to have disposal of the goods on which the reservation of title rests. Should client make use of this authority, he shall be obliged only to deliver the goods on which the reservation of title rests to third parties also only on reservation of the titles to ownership of KLEYN. He shall also be obliged to grant KLEYN on first request a non-possessory lien on the claims which he has or shall obtain on these third parties. Should the client refuse this, this provision shall be deemed to be an irrevocable power of attorney to KLEYN to bring this lien into being.

XI. RETENTION RIGHT

KLEYN shall be authorised to suspend the fulfilment of the obligation to deliver goods of client, which he has in his possession by virtue of the order, until the claim of KLEYN with regard to these goods has been paid in full including interest and costs.

XII. PART-EXCHANGE

Where client continues to use a part-exchanged motor vehicle in anticipation of the delivery of the motor vehicle ordered by him, all costs of the first mentioned motor vehicle and any diminution in value thereof shall be for his account.

XIII. LIABILITY

1. KLEYN shall not be liable for damage caused as a result of any default in the fulfilment of its obligation(s) towards client. The fulfilment of the obligations under guarantee/claim as described in article VII shall apply as sole and full compensation. Any other claim for compensation, including claims for trading losses (losses due to stoppage, loss of income and any other consequential losses of whatever nature) and losses incurred as a result of liability in relation to third parties are also expressly excluded, unless intent or gross negligence by KLEYN or managerial subordinates is involved.
2. KLEYN shall also not be liable for intent or (gross) negligence of (non-managerial) subordinates or of others which it has called in by virtue of the execution of the agreement.
3. KLEYN shall not accept any liability for advice given by or on behalf of it.
4. KLEYN shall not be liable for damage to motor vehicles of third parties which are located on its site.

XIV. FORCE MAJEURE

Force majeure shall be understood in the sense of these general conditions to be any circumstance outside the will and agency of KLEYN, whether or not foreseeable at the time of entering into the agreement, as a result of which fulfilment may not reasonably be demanded of KLEYN, such as war, government measures, lack of raw materials, factory or transport disruptions of any nature whatever, strikes, lockout or lack of personnel, quarantine, epidemics, hold-ups due to frost, default of third parties called in by KLEYN for the execution of the agreement, etc.

XV. PARTIAL NULLITY

Should one or more provisions from this agreement with client not be or not be entirely legally valid, the other provisions shall be fully maintained. Instead of the invalid provisions a suitable regulation shall apply which comes as close as possible to the intention of parties and the economic result sought after by them in a legally effective way.

XVI. PLACE OF FULFILMENT, APPLICABLE LAW, COMPETENT COURT

1. The seat of KLEYN shall be the place where client must fulfil his obligations towards KLEYN.
2. Solely Dutch law shall apply to all quotations and agreements of KLEYN, with the exception of the provisions of Section 6:5.3 BW (Dutch Civil Code).
3. All disputes which may arise as a result of the agreement signed between client and KLEYN, or from further agreements, which may follow them, shall be settled by the competent court in Dordrecht.