

General Terms and Conditions of Havantec Food Equipment B.V.

Applicability

Article 1

1. These general terms and conditions shall apply to all quotations and agreements issued or concluded by Havantec Food Equipment B.V., with registered office in Oirschot, and place of business in 5688 XG Oirschot at Den Uitvanck 20, registered with the trade register of the Chamber of Commerce under file number 71996192, hereinafter to be referred to as: Havantec Food Equipment.
2. Any General Terms and Conditions of the other party are expressly rejected.
3. In these General Terms and Conditions, the term 'other party' shall be understood to mean any (legal) person who concludes or has concluded an agreement with Havantec Food Equipment, and in addition to this person, their representative(s) and successor(s) in title.
4. These General Terms and Conditions apply to all subsequent offers and agreements, issued or concluded with the same other party, regardless of whether they are related to or follow offers already made or agreements concluded.
5. Deviating or additional provisions can only be agreed in writing.
6. If one or more provisions of these General Terms and Conditions are not legally valid, the other provisions of these General Terms and Conditions shall remain fully applicable.

Quotations

Article 2

1. All quotations of Havantec Food Equipment are without obligation unless explicitly stated otherwise in the quotation; in that case the quotation shall be valid for one month.
2. If no agreement is concluded, Havantec Food Equipment shall be entitled to reimburse all costs incurred in preparing the quotation from the person who requested the quotation, unless agreed otherwise.
3. An agreement shall only be concluded if Havantec Food Equipment has confirmed in writing that it accepts the offer or the order of the other party.
However, the parties may also prove that the agreement was concluded by other means.
4. The drawings, models, designs, calculations, samples, prospectuses and the like provided by or on behalf of Havantec Food Equipment with the quotation shall remain the property of Havantec Food Equipment and must be returned by the other party immediately in the event that the agreement is not concluded. Havantec Food Equipment reserves all rights concerning intellectual property with respect to these items.
5. These documents provided by or on behalf of Havantec Food Equipment may not be reproduced, disclosed or made available to third parties in whole or in part in any way or used in any other way without the express written permission of Havantec Food Equipment.
6. All prices quoted are exclusive of turnover tax, unless explicitly stated otherwise.
7. The other party is responsible for the data, specifications, calculations and the like provided by them.
8. The other party indemnifies Havantec Food Equipment against all claims by third parties based on infringement of intellectual property rights arising from the data, models, images etc. provided by the other party which are filed against Havantec Food Equipment.
9. Havantec Food Equipment shall be entitled on or after entering into the agreement, before (further) performing, to demand security from the other party that the payment and any other obligations will be met.

Price and price adjustment

Article 3

1. All agreed prices are exclusive of any turnover tax due thereon.
2. Havantec Food Equipment reserves the right to increase the agreed prices if, after the agreement has been concluded but before the time of its execution, changes in one or more cost price factors give cause to do so.

3. Havantec Food Equipment shall notify the other party in writing in good time if and insofar as it makes use of the above right to make price adjustments.

Havantec Food Equipment shall dissolve the agreement at the written request of the other party if the price adjustment leads to a price difference with the agreed price of more than ten percent (10%).

4. Unless explicitly agreed otherwise, all prices are indicated in Euros.
5. All agreed prices are exclusive of any transport or packaging costs, unless otherwise agreed.

Delivery and risk

Article 4

1. Havantec Food Equipment shall determine the manner in which the agreement shall be executed, unless otherwise agreed.
2. Delivery shall take place at the place and time stated in the quotation or in the order confirmation.
The period within which the delivery must take place shall commence at the moment at which Havantec Food Equipment has all the information, permits, instructions, documents, exemptions, assignments and supplies necessary for the delivery or for the manufacture and transport of the goods to be delivered.
3. Unless expressly agreed otherwise, Havantec Food Equipment shall be entitled to deliver the goods to be delivered by it in stages, whereby each delivery shall be invoiced separately.
4. Havantec Food Equipment reserves the right to deliver all or part of the goods to be delivered by it before the agreed time.
5. If the other party does not take delivery of the goods, does not take delivery on time or does not take delivery at the agreed place because the other party does not provide the necessary cooperation or because another obstacle arises on his part, the other party shall be in default by operation of law and Havantec Food Equipment shall be entitled to transport and store the goods at the expense and risk of the other party from the place where and from the time at which the delivery is to take place at a place to be determined by Havantec Food Equipment.
Havantec Food Equipment shall then be entitled to compensation for the damage it has suffered. This compensation shall amount to at least 10% of the net invoice amount, without prejudice to the right to claim compensation for the remaining sum.
6. If the other party has not taken receipt of the goods within two months of the offer, Havantec Food Equipment shall be entitled to dissolve the agreement on the basis of which the delivery takes place without judicial intervention and to sell or take back the goods to be delivered. In that case, the other party shall owe compensation to the amount of the loss of profit and all costs incurred in this respect. This compensation shall amount to at least 10% of the net invoice amount, without prejudice to the right to claim compensation for the remaining sum.
7. The risk of loss, damage or the complete or partial destruction of the goods to be delivered shall be borne by the other party from the moment of delivery or from the moment and place at which the delivery must take place by virtue of the agreement.
8. Havantec Food Equipment shall strive for the specified period within which the delivery must take place in accordance with the principles of reasonableness and fairness but shall not be binding.
9. Exceeding the specified delivery period does not entitle the other party to suspend its obligations under the agreement.
10. Exceeding the term within which the delivery must take place shall never lead to liability on the part of Havantec Food Equipment for direct or indirect consequences of the late delivery.
11. The costs relating to the delivery of goods, including in any case the costs of transport, insurance, obtaining the necessary documents and permits, packaging, hoisting, loading and unloading activities, shall be borne by the other party, unless agreed otherwise.
The delivery costs shall be charged separately, unless otherwise agreed.

12. Havantec Food Equipment reserves the right not to execute orders if the other party has not paid for previous deliveries within the agreed payment term.

Return shipments

Article 5

Return shipments of goods already delivered by Havantec Food Equipment shall only be accepted by Havantec Food Equipment after written permission. These returns are entirely at the expense and risk of the other party.

Retention of title

Article 6

1. As security for the correct and complete fulfilment of the obligations of the other party, Havantec Food Equipment shall retain title of the goods delivered until the moment at which the other party has fulfilled its obligations. In this context, obligations are understood to mean obligations in respect of the compensation owed to Havantec Food Equipment in respect of:
 - a. the goods delivered or to be delivered pursuant to this agreement;
 - b. work to be performed for the other party pursuant to this agreement;
 - c. the claims due to failure to comply with this agreement.
2. If Havantec Food Equipment has claims against the other party for which retention of title has been made and claims against the other party for which no retention of title has been made, payment by the other party shall first serve to pay the claim for which no retention of title has been made.
3. If the other party has paid in full the claims for which title to the goods delivered is reserved, Havantec Food Equipment shall, if it deems this desirable, retain a non-possessory pledge for the security of the current and future claims of Havantec Food Equipment against the other party at the moment that it provides title to the goods delivered.

In that case, the other party shall be obliged to cooperate in the establishment of this non-possessory pledge under penalty of an immediately due and unconditional penalty of 50% of the net invoice amount for the delivered goods on which ownership is reserved.
4. As long as the ownership of the delivered goods has not been transferred to the other party, the other party is not permitted to transfer the ownership of the delivered goods, to encumber or alienate the goods in terms of business or obligations, under any title whatsoever.
5. As long as the ownership of the goods delivered has not been transferred to the other party, the other party is obliged to keep the goods delivered with due care and as the clear property of Havantec Food Equipment. Any marks or signs applied to, on or to the goods delivered must remain visible to everyone.
6. As long as the ownership of the delivered goods has not been transferred to the other party, the other party is obliged to store the delivered goods separately and clearly recognisable, if this is determined solely by type and weight.
7. As long as the ownership of the goods delivered has not been transferred to the other party, the other party shall be permitted to sell and transfer the goods delivered to third parties within the framework of its normal business operations, provided that, in the event of resale, it retains ownership of the goods delivered towards its customer, or immediately pays the purchase price owed by them to Havantec Food Equipment, or, at Havantec Food Equipment's first request, grants the latter a right of pledge on the claim on its purchase.
8. Havantec Food Equipment shall be entitled to take back the goods delivered subject to retention of title if and insofar as the other party fails to fulfil any obligation towards Havantec Food Equipment or has difficulty paying in the opinion of Havantec Food Equipment.
9. The other party hereby grants Havantec Food Equipment the irrevocable right to enter the other party's company buildings or to allow them entry by a third party to be designated by Havantec Food Equipment if Havantec Food Equipment wishes to take back the goods delivered or if it wishes to check the actual presence of the goods delivered in those company buildings.

Complaints/defects

Article 7

1. The other party is obliged to examine the delivered goods (or have them examined), immediately at the moment the goods are made available to them. The other party must also examine whether the quality and/or quantity of the goods delivered corresponds with what has been agreed.
2. Complaints regarding the execution of the agreement must be notified to Havantec Food Equipment no later than 24 hours after delivery of the goods or delivery of the work. If this is done by telephone, a written confirmation must follow immediately. Defects which the other party can demonstrate that he could not reasonably have discovered within 24 hours of delivery must be notified to Havantec Food Equipment within 24 hours of discovery, in both cases with an accurate statement of the nature of the complaint and with submission of the original invoice.
3. If no complaint is made within the aforementioned period, the other party shall be deemed to have unconditionally accepted the goods delivered, unless a longer period arises from the nature of the goods or the work or the other circumstances of the case.
4. Complaints shall not entitle the other party to suspend or set off payment.
5. In the event of a complaint, the other party remains obliged to take delivery of and pay for the otherwise ordered goods for which an order has been given.
6. The other party shall not be able to assert any claims on account of defects against Havantec Food Equipment if he has resold the delivered goods to third parties.
7. If the price of the goods delivered is particularly low, if delivery is made at a discount or if the goods are sold as a special and/or specially advantageous offer, any liability on the part of Havantec Food Equipment on account of the defectiveness of the goods delivered shall be excluded.
8. The goods delivered must be available for inspection in the event of a complaint. If the complaint is deemed well-founded, Havantec Food Equipment shall have the right to repair the defect of the goods delivered, at its discretion, by repairing the goods delivered free of charge, or replacing them in full, or by discounting (part of) the price.
9. Havantec Food Equipment shall be entitled to deliver an equivalent good if the same good cannot be delivered or cannot be delivered on time.
10. If it is established that the other party's complaint is unfounded, the other party shall be obliged to reimburse the costs incurred by Havantec Food Equipment, such as travel and research costs.
11. If Havantec Food Equipment is not given the opportunity to repair defects, but the other party orders a third party to do so, the costs incurred for this shall be at the other party's expense.
12. During the period in which the other party is in default of fulfilling any of their obligations under the present or any other agreement with Havantec Food Equipment, it shall not be possible to complain about defects of the goods delivered or the work performed.
13. Any liability towards the other party in respect of defective performance of the agreement shall at all times be limited to what is stated above.

Warranty

Article 8

1. Havantec Food Equipment guarantees the soundness and the agreed quality of the goods delivered for a period of 12 months for new machines, and for a period of three months for second-hand machines, counting from the time of delivery, and only if the other party demonstrates that the defect in the goods delivered was caused by an incorrect construction or manufacture of the goods delivered, or by Havantec Food Equipment using faulty materials, raw materials and auxiliary goods.

2. Defects which are wholly or partially the result of a method of processing prescribed by the other party, or of a construction or manufacturing tools prescribed by the other party, or which are wholly or partially caused by a supplier, consultant, subcontractor or auxiliary person prescribed by the other party, are not covered under the warranty.
3. The warranty does not cover defects which can be traced back in whole or in part to, among other things, but not limited to:
 - a. improper treatment by the other party;
 - b. improper storage by the other party as a result of which the delivered goods are exposed to the effect of moisture, pollution, high and low temperatures, shocks and vibrations, (magnetic) radiation or too long storage;
 - c. wear which is not excessive in view of the use that Havantec Food Equipment can foreseeably make of the delivered goods;
 - d. use of the goods delivered other than in accordance with the guidelines and specifications provided with the goods delivered or other than in accordance with the purpose for which the goods were delivered;
 - e. compliance with any government regulations.
4. If the other party has made changes to the delivered goods, or uses the delivered goods, other than in accordance with the guidelines and specifications provided with the delivered goods or other than in accordance with the purpose for which the goods were delivered, the warranty will lapse.
5. If and insofar as a supplier is obliged to provide any form of warranty to Havantec Food Equipment in respect of the goods delivered, the warranty provided by Havantec Food Equipment shall never extend beyond the warranty provided by this supplier.
6. Havantec Food Equipment shall be entitled to repair the defect of the goods delivered at its discretion by repairing the goods delivered free of charge or replacing them entirely.
It may, at its discretion, also fulfil its warranty obligation by refunding the price.
The work in connection with the warranty, as described in this article, must be carried out by or on the instructions of Havantec Food Equipment.
7. Any claim under the warranty lapses if the other party does not submit a delivery document dated and signed by Havantec Food Equipment. Havantec Food Equipment shall provide the aforementioned delivery document upon delivery.
8. If Havantec Food Equipment proceeds to replace all or part of the delivered goods or to refund the purchase price in full or in part, it may offset the benefit of the temporary use by the other party.
9. This warranty shall in no event extend beyond the delivery of new parts. Explicitly not included in this warranty are the costs of labour.
10. The agreed warranty period shall not be extended by replacement or repair of the delivered goods pursuant to these warranty provisions.
11. During the period in which the other party is in default of fulfilling any of its obligations arising from the present agreement or any other agreement related to this agreement, Havantec Food Equipment shall not be obliged to provide any warranty.
12. Any liability towards the other party in respect of a defective delivery shall at all times be limited to the warranty obligations stated above.

Liability

Article 8

1. The liability of Havantec Food Equipment for all direct costs and damage, in any way related to or caused by an error or shortcoming in the execution of the agreement, shall at all times be limited to the net invoice amount in respect of the order unless the amount for which Havantec Food Equipment has taken out insurance for such damage causing events and for which actual cover is provided is lower than the amount insured and actually covered.
2. Havantec Food Equipment shall never be liable for all indirect costs and indirect damage, in any way related to or caused by an error or shortcoming in the execution of the agreement.
3. The other party shall indemnify Havantec Food Equipment against all claims by third parties for compensation for damage or otherwise, which are directly or indirectly, related to the execution of the agreement between Havantec Food Equipment and the other party.

The other party shall be liable for the damage to or loss of goods and tools unless the damage or loss is due to gross negligence or intent on the part of Havantec Food Equipment.

Force Majeure

Article 9

1. If and insofar as Havantec Food Equipment is unable to fulfil its obligations under the agreement, to fulfil them in full or in time or at the agreed location as a result of a cause for which it cannot be held accountable, it shall be entitled to dissolve the agreement in question without judicial intervention and without being liable for damages as a result, or to suspend the obligations under the agreement in question for a reasonable period of time.
2. Causes that cannot be attributed to Havantec Food Equipment include: any unforeseeable stagnation in the regular course of business in the company of Havantec Food Equipment or in the company of a third party from whom Havantec Food Equipment obtains goods or services, as well as apparent changes since the conclusion of the agreement in the actual circumstances that directly or indirectly affect the cost price factors or delivery possibilities.
3. Causes that cannot be attributed to Havantec Food Equipment include: fire, water damage, special weather conditions, disasters, war and threat of war, infectious diseases, government measures, riots, acts of war, strikes, lockouts, work-to-rule, defects in machines or installations, interruption, stagnation in the supply of or rationing of raw materials, auxiliary materials and fuels, non-compliance with an obligation by a third party from whom Havantec Food Equipment obtains goods or services.
4. If one of the above circumstances occurs, Havantec Food Equipment shall notify the other party as soon as possible, submitting the available evidence.

Payment

Article 10

1. All payments must be made within 30 days of the invoice date, without any right to discount or set-off, also in case of bankruptcy, at the offices of Havantec Food Equipment or by means of a deposit into a bank account designated by the latter.
2. Havantec Food Equipment is entitled to require an advance payment from the other party, in which case the other party shall be notified thereof.
3. If the other party has not paid within the term indicated above, they shall be in default without any further notice of default being required.
4. If the other party fails to pay within the term indicated above or within the further agreed term, they shall be in default by operation of law and Havantec Food Equipment shall be entitled, without further demand or notice of default being required, to charge the other party interest of one percent per month from the due date, such until the date of full payment and without prejudice to the other rights to which Havantec Food Equipment is entitled.
5. All costs that Havantec Food Equipment incurs as a result of the other party's failure to fulfil any of its obligations under this agreement, or its failure to do so on time or properly, shall be borne by the other party.
These costs include the costs of summons, notice of termination, collection and bailiff, as well as the costs of the adviser/lawyer and procurator, and all other extrajudicial and judicial costs.
These costs shall be set by Havantec Food Equipment and the other party at a minimum of 15% of the principal sum to be claimed, with a minimum of € 500.
The other party is in default due to the fact of non-performance or improper performance.

6. If and insofar as the other party is in default of payment, as well as in the event of bankruptcy, petition for suspension of payment and closure or liquidation of his business, all that Havantec Food Equipment has to claim from the other party shall be immediately due and payable.
7. Havantec Food Equipment reserves the right to demand full or partial advance payments of the agreed price.
8. The other party shall be obliged, at Havantec Food Equipment's first request, to provide security or to issue a bank guarantee for all that which the other party may owe Havantec Food Equipment pursuant to this agreement or otherwise.
9. Havantec Food Equipment shall be entitled to offset all payable claims of the other party against Havantec Food Equipment with all monetary claims against the other party of Havantec Food Equipment.

General Data Protection Regulation

Article 11

1. In the context of the work or in the context of complying with statutory obligations, the other party may process personal data about the other party and/or persons affiliated with and/or working for the other party by Havantec Food Equipment.
Havantec Food Equipment shall hereby ensure (or have ensured) an appropriate security level in view of the risks involved in the processing and the nature of the personal data to be protected. This, however, only if and insofar as these are located in the (computer) systems or infrastructure of Havantec Food Equipment.
Processing of personal data takes place in accordance with the General Data Protection Regulation (GDPR).
2. Havantec Food Equipment shall handle the personal data provided by the other party with due care. Personal data shall only be accessible to Havantec Food Equipment and shall not be provided to third parties, except in the context of the work and/or the cases in which Havantec Food Equipment is obliged to do so by virtue of the laws and regulations applicable at that time and/or a court decision.
3. In the event of a data breach, the other party shall, if necessary and reasonably possible, cooperate with Havantec Food Equipment so that it can fulfil its obligation in a timely fashion to report in accordance with the provisions of the GDPR.
4. The other party is responsible for complying with the applicable laws and regulations in the field of the protection of personal data and indemnifies Havantec Food Equipment against costs and damage as a result of claims by third parties in connection with the other party's non-compliance with the GDPR.

Applicable law and choice of forum

Article 12

1. Dutch law shall apply to all agreements between Havantec Food Equipment and the other party.
2. All disputes that arise from the agreements between Havantec Food Equipment and the other party and that do not fall under the jurisdiction of the subdistrict court, must in the first instance be brought before and adjudicated by the District Court of East Brabant.

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