

HIGOLD®

GENERAL CONDITIONS OF SALE AND DELIVERY

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1. DEFINITIONS

In these general terms and conditions of sale and delivery, the following terms shall have the following meanings:

Supplier

Van Gestel B.V., established in Apeldoorn, and/or its subsidiary Kaja Horeca Interieurs B.V., established in Rijssen;

Customer

The counterparty of the Supplier in any Agreement or other legal relationship;

Agreement

Any agreement between the Supplier and the Customer, including any amendments or supplements thereto;

Goods

All tangible items to be delivered to the Customer in execution of an Agreement;

Services

All services to be provided by the Supplier to the Customer, including – but not limited to – advisory services;

Damage

All direct financial losses incurred by the Customer, excluding lost revenue, profit and/or other consequential damage, but including reasonable costs for accountants, legal and tax advisors incurred in assessing damages and liability;

Terms

These general terms and conditions of sale and delivery.

2. APPLICABILITY

1. These Terms apply to all legal relationships between the Supplier and the Customer, including offers and Agreements.
2. By accepting an offer made by the Supplier, the Customer also accepts the applicability of these Terms. The applicability of the Customer's general terms and conditions is explicitly rejected by the Supplier.
3. Deviations from and/or additions to these Terms are only valid if and insofar as they have been expressly accepted in writing by an authorized representative of the Supplier. Any agreed deviation or addition shall apply only to the delivery for which it was agreed.

3.OFFER, ACCEPTANCE AND ORDERS

1. All offers and quotations made in any way by or on behalf of the Supplier are non-binding, unless they contain a term for acceptance. Offers stated in brochures, price lists, etc., are also non-binding. If a non-binding offer is accepted by the Customer, the Supplier reserves the right to withdraw the offer.
2. Offers and commitments made by intermediaries, representatives and/or employees engaged by the Supplier are only binding if confirmed in writing by the Supplier.
3. The Supplier has full discretion to accept or reject orders placed by a Customer.
4. Agreements are deemed concluded when:
 - (1) the Supplier confirms an offer or order from the Customer in writing;
 - (2) the Supplier commences execution of the Agreement; or
 - (3) the Supplier sends an invoice to the Customer relating to the Agreement.
5. Orders accepted by the Supplier are deemed to refer only to type and brand. If packaging, design, model, type, etc., has been altered, the Supplier is deemed to have fulfilled its obligation by delivering the modified version at the applicable standard price.

4. DELIVERY, TRANSFER OF RISK, INSPECTION AND COMPLAINTS

1. Unless otherwise agreed in writing, delivery shall take place ex distribution centre of the Supplier. From the moment the Goods leave the distribution centre, they are at the Customer's risk and expense.
2. If and insofar as the Supplier arranges the transport of the Goods, this does not affect the provisions of paragraph 1 of this article. The method of transportation shall be determined by the Supplier. The Customer is obliged to accept and unload the Goods at the agreed delivery location immediately upon arrival.
3. If the Supplier arranges the transport of the Goods, whether or not on the Customer's instruction, the Supplier is free to choose the packaging, the carrier, and the transport route. If the Supplier also arranges transport insurance, this shall not affect the provisions of paragraph 1, and the Customer is responsible for any additional insurance as needed.
4. From the moment the Goods are at the Customer's risk, the Customer must ensure adequate insurance against all possible risks, including – but not limited to – loss, theft, damage, or destruction.
5. The Supplier has the right to deliver in instalments. Each instalment shall be governed by the same conditions applicable to the entire Agreement. The Supplier may invoice each instalment proportionally.
6. If the actual delivery date is postponed at the request of, or due to the actions of, the Customer, if the Customer requests partial deliveries and/or fails to collect the Goods, the risk transfers to the Customer from the moment the Goods are identified in the Supplier's records and/or storage as "Customer's Goods". From that moment, the Supplier may invoice the Customer. Any extra costs for transport, storage, insurance, and/or other charges are borne by the Customer.
7. Upon delivery, the Customer shall inspect whether the Goods conform to the Agreement (correct product, quality, quantity, shelf life, absence of damage, etc.). If the Goods do not conform, the Customer loses the right to claim unless the Supplier is notified in writing and with reasons:
 - within 2 working days of delivery for visible defects,
 - within 2 days of discovery or 7 days after delivery (whichever is earlier) for non-visible defects.The right to claim also lapses if the Customer fails to sufficiently cooperate in the Supplier's investigation. The Supplier must be given the opportunity to inspect the Goods.
8. Changes in technical standards in the industry and/or government regulations are at the Customer's risk. Minor or technically unavoidable deviations in quality, quantity, dimensions, colour, size, etc., do not justify complaints. The same applies to colour differences caused by lighting or weather conditions.
9. Returns will only be accepted with the prior written approval of the Supplier. All costs and risks related to returns are borne by the Customer. The Supplier is not obliged to accept returns of Goods purchased based on samples or selected at the Supplier's premises. The right to claim also expires if the Customer fails to meet its obligations or if the Goods have been used, processed, or altered.
10. If delivered Goods are defective and the procedures above have been duly followed, the Supplier will, at its sole discretion, either repair the defective item, replace it with a non-defective item, or

credit the corresponding amount. The Supplier shall not be liable for any damages suffered by the Customer due to the defectiveness of the products.

5. SERVICES

1. If the Supplier provides Services to the Customer, the Supplier shall use its best efforts to perform these Services to the best of its ability.
2. The Customer agrees that the Supplier may engage one or more third parties to perform the Services. The Supplier is not liable for shortcomings by such third parties who are not in an employment relationship with the Supplier, except in cases of intent or gross negligence by the Supplier. The authority to engage third parties also includes the authority to accept limitations of liability on behalf of the Customer as imposed by those third parties.

6. DELIVERY TERMS

1. Stated or agreed delivery terms shall never be considered strict deadlines. In the event of late delivery, the Supplier shall only be in default after receiving a written notice of default, allowing for a reasonable additional period of at least 30 days to deliver. The Customer remains obliged to accept the delivery.
2. If the Supplier remains in default after the notice period, the Supplier shall consult with the Customer on either performance or termination of the Agreement. The Customer may only claim compensation if this has been expressly agreed upon in writing beforehand. Any compensation due by the Supplier shall in no case exceed the invoice amount corresponding to the undelivered, late, incorrect or incomplete Goods.

7. PRICES, PAYMENT AND SETTLEMENT

1. Goods and/or Services supplied to the Customer are charged at the Supplier's prices applicable on the day of delivery, even if a different price was explicitly agreed upon. If the invoiced price exceeds the initially agreed price by more than 10%, the Customer may terminate the Agreement in writing immediately after being notified of the price increase. This right lapses if not exercised immediately. The right to terminate does not apply if the price increase results from government measures or freight rate changes.
2. All prices are exclusive of VAT, packaging costs, environmental charges, and other taxes or government levies applicable at the time of delivery, unless explicitly stated otherwise. Unless agreed otherwise, all transport, shipping, postage, and insurance costs are borne by the Customer.
3. The Customer is required to pay the Supplier for packaging materials. Packaging is credited by the Supplier only if the Customer (1) returns it by own vehicle, (2) within 1 year of delivery, (3) if the packaging was invoiced and paid, and (4) if it is sorted by brand and content.
4. Payment must be made within 5 days of the invoice date to an account designated by the Supplier. Delivery shall only take place after full payment, unless otherwise agreed in writing.
5. Payment must be made in the invoiced currency without set-off, discount, or suspension. The Supplier is entitled to offset any amounts owed by the Customer against any amounts payable by the Supplier or its affiliated entities to the Customer.
6. If payment is not made within 5 days of the invoice date (or within the agreed term), the Customer shall be in default without further notice. All outstanding amounts become immediately due. The Customer shall pay default interest equal to the statutory commercial interest under article 6:119a of the Dutch Civil Code plus 2 percentage points. Additionally, a credit limitation surcharge of 3% of the outstanding invoice amount is payable.
7. If there is reasonable concern that the Customer will not comply with its obligations, all Supplier's claims become immediately due, and the Customer must provide sufficient security in a form acceptable to the Supplier. Until this is done, the Supplier is entitled to suspend its obligations.
8. If the Customer fails to meet payment obligations (timely or at all), all collection costs (both legal and extrajudicial) shall be at the Customer's expense. Extrajudicial collection costs shall be calculated in accordance with the Dutch "Voorwerk II Report," with a minimum of €1,500.00.
9. Objections to an invoice must be submitted in writing within 8 days of the invoice date. After that, the invoice shall be deemed accepted.
10. Payments made by or on behalf of the Customer shall be applied in the following order:
 - (1) extrajudicial collection costs,
 - (2) legal costs,
 - (3) accrued interest,
 - (4) and finally the principal amounts in order of age, regardless of any contrary indication by the Customer.

8. RETENTION OF TITLE

1. Supplier retains ownership of the Goods until full payment has been made for:
 - a. all obligations of the Customer for Goods and/or Services delivered or to be delivered by the Supplier; and
 - b. all claims of the Supplier against the Customer due to the Customer's failure to fulfil its obligations.
2. If retention of title is invoked, the Customer is not entitled to compensation for storage costs, nor may the Customer invoke any right of retention in that respect.
3. If the Customer defaults on any obligations as stated in Article 7, or if the Supplier reasonably suspects that the Customer will not fulfil its obligations, the Supplier is entitled to recover the Goods from the location where they are stored. The Customer hereby irrevocably authorises the Supplier to enter its premises to do so. Failure to comply on first request will result in a penalty of 10% of the outstanding amount per day, payable immediately.
4. The Customer may resell or use the Goods subject to retention of title only as part of its normal business operations. In case of resale, the Customer must impose the same retention of title. This does not apply in the event of bankruptcy or suspension of payments, in which case resale is not permitted. The Goods may not be pledged, encumbered or subjected to any restricted right.
5. The Customer shall store the Goods delivered under retention of title carefully and recognisably as the property of the Supplier, and insure them adequately against all business and other risks (including but not limited to fire, theft, water damage, explosion, etc.). Upon first request, the Customer shall provide the Supplier with copies of the relevant insurance policies and proof of timely premium payment.
6. The Customer hereby pledges to the Supplier, as security for all obligations other than those referred to in paragraph 1 (including future claims), all Goods that have passed into its ownership by payment or processing but are still in its possession. Upon request, the Customer shall hand over these Goods to establish a possessory pledge. Paragraph 3 applies mutatis mutandis. Additionally, upon first request, the Customer shall:
 - a. pledge any claims against insurers relating to the Goods referred to in this article to the Supplier;
 - b. pledge any claims against its debtors relating to the same Goods to the Supplier;
 - c. otherwise cooperate with reasonable measures the Supplier wishes to take to protect its interests and/or ownership rights, provided such measures do not disproportionately hinder the Customer's business operations.

9. WARRANTY

1. The Supplier provides no warranty beyond that of its suppliers and/or manufacturers for the relevant Goods.
2. If a supplier or manufacturer does not generally provide a warranty for a product, the Supplier guarantees that the product will perform as can reasonably be expected for such a product, for a reasonable period after purchase – but no longer than 6 months. The warranty applies only under normal use and in accordance with applicable instructions. If the product proves defective within the warranty period, the Customer shall return it. The Supplier will repair or replace the item. No further obligations exist. Under no circumstances shall the Supplier be liable for damages related to defects during the warranty period.
3. Any repair or modification carried out without written approval from the Supplier voids the warranty. The same applies if the Goods are not used or cleaned according to instructions.
4. When reselling Goods to third parties, the Customer may not offer warranties that exceed those outlined in this article.
5. No warranty applies to Services. No warranty applies to natural products for characteristics inherent to the material. For wood, this includes small cracks, splits, resin pockets, knots, minor or typical colour variations, and irregular grain structures.

10. INSTALLATION / ASSEMBLY

1. If the Supplier is responsible for the installation/assembly of Goods, all other work (including, but not limited to, chiselling, demolition, masonry, concrete, plastering, plumbing, electrical, gas, painting, heating, scaffolding and carpentry work) shall be at the Customer's expense and risk. The same applies to any required fixings, brackets or facilities not explicitly included in the accepted quotation. The Customer shall also obtain and pay for any necessary permits in time.
2. Unless agreed otherwise in writing, the installation price only includes work and delivery during standard working hours, uninterrupted, under normal conditions, in the presence of the Customer, at a location that is fully accessible and safely reachable via paved access roads. If these conditions are not met or special circumstances cause delays, additional costs are at the Customer's expense. This includes cases where delivery is not possible because the Customer cannot pay in cash (if agreed) or is absent.
3. The Customer shall provide, at its own cost, a lockable dry storage space for tools, goods and materials. Additionally, the Customer shall ensure suitable shelter, adequate power supply (220/380V), water, lighting, and other required facilities at the site.
4. The Customer is fully responsible and bears the risk to ensure:
 - a. that installation personnel can begin work under normal conditions and proceed without obstacles according to their own schedule;
 - b. that work can take place during normal hours, or outside such hours if agreed in writing at the Customer's request;
 - c. that the site meets all safety requirements and precautions are in place.
Failure to meet these conditions will result in all extra costs (including travel and accommodation) and damages being charged to the Customer, including delays preventing subsequent installations at other sites.
5. The Customer must be present at the installation site upon completion to inspect the work. Complaints made after departure of the installation personnel will not be processed unless the Customer proves the defect could not reasonably have been discovered at the time.
6. Installation and assembly costs must be paid in advance. If such costs cannot be determined beforehand, the Customer must pay a reasonable advance calculated by the Supplier.

11. LIABILITY, FORCE MAJEURE AND RELIEF

1. In the case of defective Goods, the Supplier's liability is limited to fulfilling the Warranty provisions described in Article 9 of these Terms.
2. In all other cases (including where Services are provided and/or the Supplier fails to fulfil warranty obligations for any reason), the Supplier's liability is limited to compensation for Damage attributable to intent or gross negligence by the Supplier or its employees. The Supplier is not liable for any other damage, of any kind or form.
3. The Supplier is not liable for damage arising from statements, clarifications or advice – in the broadest sense – provided by the Supplier (or its intermediaries, representatives or employees), including but not limited to those concerning loading, unloading, transport, storage, preservation, use, composition and/or suitability of Goods supplied by it or third parties.
4. In no case shall the Supplier be obliged to compensate for damages exceeding the amount recoverable from its insurers, plus any deductible. If insurers do not pay or the damage is not covered, the Supplier's liability is limited to compensation for Damage up to the net invoice value of the relevant delivery/service, with an absolute maximum of €10,000.00.
5. The Supplier shall invoke all statutory and contractual defenses available to avoid its own liability, also on behalf of its subordinates, third parties for whom it may be liable by law, and its suppliers.
6. Any liability of the Supplier toward the Customer shall expire three years after (1) the Goods have been delivered; and/or (2) the Services have been completed.
7. The Supplier is not liable for delays or non-/incorrect delivery resulting directly or indirectly from force majeure. Force majeure includes any circumstance beyond the Supplier's control that hampers the normal execution of the agreement or makes it unreasonably difficult, such as strike, illness, staff shortage, lack of materials, governmental measures (including import/export restrictions), third-party failure (including suppliers), equipment defects/damage, transport disruptions, and traffic breakdowns. The Supplier may invoke force majeure even after its delivery obligation has arisen.
8. Without prejudice to other rights, force majeure entitles both parties to terminate the agreement – as to the unfulfilled portion – after a force majeure situation has lasted for one month, without any obligation to pay damages. Article 4(5) applies accordingly.

12. INTELLECTUAL PROPERTY

1. All documents, brochures, images, drawings, quotations, specifications, designs, etc. provided by the Supplier to the Customer remain the Supplier's property. The Customer is not permitted to use them for any purpose other than that for which they were made available.
2. The Customer may not disclose these documents or the information therein – whether explicit or implied – to third parties, nor allow third-party access. Upon request, these documents must be returned to the Supplier immediately and without retaining copies.
3. In case of unauthorised use of such materials – including, but not limited to, drawings, specifications, quotations or designs – the Customer shall compensate the Supplier for all resulting damages, including lost revenue/profit and the cost of developing any materials made exclusively for the Customer.

13. TERMINATION

1. If the Customer fails to comply properly or on time with any obligation arising from the agreement, or in the event of bankruptcy, suspension of payment, guardianship, cessation or liquidation of the Customer's business, the Supplier is entitled – without any obligation to pay damages and without prejudice to its other rights – to terminate the agreement in whole or in part or suspend further performance. In such cases, all Supplier claims become immediately due.
2. In the event of termination, the Customer shall compensate the Supplier for all resulting damages, which shall be at least equal to any advance payments made under the Agreement.

14. SEVERABILITY, INTERPRETATION AND CHANGE OF ADDRESS

1. If and to the extent that any provision of these Terms cannot be relied upon on the grounds of reasonableness and fairness or because it is unreasonably onerous, that provision shall be interpreted as having a meaning and scope that enables reliance on it.
2. The nullity or unenforceability of any provision in these Terms shall not affect the validity of the remaining provisions.
3. If the Supplier at any time does not insist on strict compliance with one or more of these Terms, this shall not mean that the Supplier waives the right to require strict compliance at a later date.
4. The Customer must immediately notify the Supplier in writing of any change of address. Goods delivered to the last known address of the Customer as registered by the Supplier shall be deemed to have been received by the Customer.

15. APPLICABLE LAW AND COMPETENT COURT

1. All legal relationships between the Supplier and the Customer shall be governed by Dutch law. The applicability of the Vienna Convention on the International Sale of Goods (CISG) is explicitly excluded.
2. The court of Zutphen (Netherlands) shall also have jurisdiction to hear any disputes between the Supplier and the Customer.

16. DEPOSIT

1. These general terms and conditions have been filed with the Chamber of Commerce for Eastern Netherlands under registration number 0806.4439 and will be sent free of charge to the Customer upon request.