

## **GENERAL TERMS AND CONDITIONS OF PURCHASE AND SUPPLY**

of Verberne und Verberne-jonk, trading under the name of Ivanhoe Horse Equipment in Boxtel (Netherlands), hereinafter referred to as: IHE

### **CHAPTER I GENERAL PROVISIONS**

#### **Article 1. Scope of application**

- 1.1 These general terms and conditions shall apply to all offers from and to IHE, contracts concluded by IHE for the sale and/or supply, purchase and/or acceptance of goods and/or services (hereinafter jointly referred to as 'products'), as well as the implementation of said contracts. Any deviation thereof must be expressly agreed with IHE in writing.
- 1.2 In these terms and conditions the 'other party' shall be deemed to include: any (legal) person who enters into a contract either directly or through a third party. In Chapter II this is the buyer from IHE and in chapter III the supplier of IHE.
- 1.3 If IHE has concluded a contract with the other party whereby the applicability of these terms and conditions has been agreed upon, these terms and conditions shall also apply to any subsequent (additional) instructions and orders issued by the other party (verbally, by telephone, by fax, electronically or in any other way), regardless of any written confirmation by IHE.
- 1.4 The terms and conditions of the other party are invalid and application thereof is hereby expressly rejected, unless these terms and conditions have been expressly accepted by IHE in writing.
- 1.5 Any nullity of a stipulation of this contract or in any ensuing contract or contracts, including a stipulation contained in these terms and conditions, shall be without prejudice to the other stipulations. If one or more stipulations are declared invalid or appear to be void, parties shall be deemed to have agreed on alternative stipulations that shall correspond as much as possible to the original stipulation or stipulations.

#### **Article 2. Collection costs**

- 2.1 If the other party has defaulted on any of its obligations under the contract, all costs reasonably incurred by IHE to obtain an out-of-court settlement shall be payable by the other party, subject to a minimum amount of € 50.
- 2.2 Any legal costs and execution costs incurred shall also be payable by the other party.
- 2.3 The other party is liable for interest on the costs incurred in accordance with Article 13, section 4, of these terms and conditions.

#### **Article 3. Force Majeure**

- 3.1 No party shall be liable for any failure to perform its obligations under the contract if such failure results from a cause beyond its reasonable control or if the failure cannot be attributed to it by law, legal action or generally prevailing opinion.
- 3.2 Force majeure shall be deemed to include, in addition to the definition thereof in the law or in legal precedents: all external causes, foreseen or unforeseen, that are outside the control of IHE but as a result of which IHE is unable to meet its obligations. This concerns, among other things, technical defaults, power failures, sick leave of staff, either within the business enterprise of IHE or that of any third party from whom IHE acquires the required equipment or raw materials, also in regard to storage or during transportation, whether or not under own management, as well as in the case of default of suppliers, and furthermore all other causes beyond the control or scope of risk of IHE, including any shortcomings by third parties who, whether or not at the request of IHE, are involved in performance of the contract.

- 3.3 IHE reserves the right to invoke force majeure if the circumstance preventing (further) compliance takes effect after IHE should have performed its obligation.
- 3.4 Force majeure is also involved if IHE during the execution of an order, but before the completion thereof, observes that the order cannot be executed for technical reasons. In that case, IHE undertakes to inform the other party accordingly without delay after which the other party must inform IHE within a term to be set by IHE, how the technical problem is to be solved. If that solution entails a review of the order, IHE shall be compelled to present within fourteen days a working plan for the reviewed order and an estimate of the associated costs. If the order still proves technically unfeasible, parties shall proceed to settle all costs incurred and services rendered by IHE.
- 3.5 To the extent that IHE at the time of commencement of the force majeure has performed its obligations under the contract or will be able to perform such obligations and the part performed or to be performed has an independent value, IHE shall have the right to separately invoice the part performed or to be performed. The other party is under obligation to pay this invoice as if it concerned a separate contract.

#### **Article 4. Suspension and termination**

- 4.1 IHE is authorized to suspend compliance of its obligations or to terminate the contract if:
  - force majeure is involved;
  - the other party has been granted a (provisional) moratorium, a petition for bankruptcy of the other party is filed or the other party files a petition for bankruptcy itself, the other party offers a (private) settlement to its creditors or invokes a meeting of creditors for this purpose, the other party's company is closed down and/or the commercial activities of the other party are discontinued;
  - the other party fails to comply with its obligations under the contract;
  - after signing the contract, IHE becomes aware of circumstances that give IHE valid reasons to fear that the other party will not comply with the contractual obligations.
- 4.2 IHE is also authorized to terminate the contract if circumstances occur which render performance of the contract impossible or as a result of which such performance can no longer in reasonableness and fairness be required, or if any other circumstances occur of such a nature that unmodified continuation of the contract cannot be reasonably demanded.
- 4.3 If the contract is terminated, the claim of IHE against the other party shall immediately become due and payable. If the IHE suspends compliance of its obligations, it shall retain its rights under the law and the contract.
- 4.4 IHE shall at all times retain the right to claim compensation.

#### **Article 5. Liability**

- 5.1 Except for intentional or wilful recklessness on the part of IHE, IHE, its executive directors or its managing subordinate shall never be liable for any damages, including trading and consequential loss.
- 5.2 Any obligation to pay damages resting upon IHE shall at all times be limited to the maximum amount payable by the (third party) insurer of IHE whenever appropriate. If the insurer makes no payment at all, any obligation to pay damages resting upon IHE shall be limited to the maximum net invoice value of the supplied goods or the performed services.
- 5.3 Before using the goods supplied by IHE, the other party must always read carefully the manual provided by IHE and take account of the safety precautions. In case of lack thereof, IHE shall not be liable in any instance.

### **Article 6. Confidentiality obligation**

The other party shall not disclose to third parties any company information and knowledge, in the broadest sense of that word, obtained from IHE, under an immediately payable penalty of € 1.000 for each violation and for each day the violation continues, without prejudice to the right of IHE to claim compensation for the damage actually incurred in addition to the penalty.

### **Article 7. Jurisdiction/disputes**

- 7.1 The relationship between IHE and the other party shall be governed by Dutch law, to the exclusion of all International Treaties that may apply to the (material) legal relationship between IHE and the other party, such as the "United Nations Convention on contracts for the international sale of goods" (the "Vienna Sales Convention").
- 7.2 All disputes arising from a contract or contracts concluded between parties, shall be brought before the court in 's-Hertogenbosch, with the exception of mandatory competence of the *kanton* (district) sector, unless IHE applies to the court which has competence to take cognizance of the dispute under the law or the Convention. In the latter case, this court shall have competence to take cognizance of the dispute.

## **CHAPTER II TERMS AND CONDITIONS OF SUPPLY**

### **Article 8. Terms and conditions of supply**

The provisions contained in this chapter shall solely apply solely to all offers made by IHE, contracts under which IHE sells and/or supplies goods or services, as well as the performance of these contracts.

### **Article 9. Offers**

- 9.1 All offers by IHE are free of obligation and irrevocable, unless the offer states a term for acceptance.
- 9.2 In case of any difference between the acceptance (also on subordinate points) and the contents of the offer, IHE shall not be bound by this. In that case, the contract shall not materialize in accordance with this deviation, unless otherwise stated by IHE.
- 9.3 If an offer by IHE is accepted by the other party, IHE has the right to revoke the offer within a period of two working days following the receipt of the acceptance thereof as a result of which no contract shall materialize.
- 9.4. A combined quotation shall not compel IHE to supply part of the products included in the offer against a corresponding portion of the agreed price.
- 9.5 Offers shall not automatically apply to subsequent orders.
- 9.6 Information supplied by IHE in the form of printed matter, brochures, internet sites, appendices to the offers, advices, calculations, drawings, dimensions and similar details shall be provided as accurately as possible but free of obligations and shall not apply as an offer. IHE shall not liable for any errors, shortcomings or defaults contained therein.
- 9.7 Unless otherwise agreed, IHE shall have the right to any intellectual or industrial property rights. Unless otherwise agreed, the sketches, drawings, illustration, diagrams, calculations, descriptions of and all other documents incorporating the offer, will remain the property of IHE, also after the supply has taken place. The other party guarantees that these documents shall not be reproduced, imitated or otherwise multiplied or made available or submitted to any third party without prior written consent of IHE.

### **Article 10. Contracts**

- 10.1 A contract shall not come into effect until IHE has confirmed the assignment or order to the other party in writing within fourteen (working?) days of the date of placing such an assignment or order, or has actually started the execution thereof. The other party shall not have the right to cancel its assignment or order during this period.
- 10.2 Any subsequent additions and/or modification, as well as (verbal) pledges made by IHE, shall only have binding effect only if IHE has these confirmed in writing or has actually started the execution thereof.
- 10.3 With regards to supplies and/or activities for which, considering the nature and extent thereof, no offer or order confirmation will be sent, the invoice shall be deemed to constitute the order confirmation, which shall be considered to fully and accurately represent the contract.
- 10.4 IHE shall be authorized to call in a third party for the proper execution of the contract.
- 10.5 The other party shall arrange that all details in respect of which IHE declares that these are necessary or of which the other party should reasonably know that these are necessary for the execution of the contract, are submitted to IHE in a timely fashion. If the details required for the execution of the contract have not been submitted to IHE in a timely fashion, IHE shall have the right to suspend the execution of the contract and/or charge any extra costs incurred as a result of this delay to the other party in accordance with the applicable rates.
- 10.6 IHE shall not be liable for any damage, irrespective of the nature thereof, caused by any action of IHE on the basis of incorrect or incomplete information supplied by the other party, unless said incorrectness or completeness was cognizable for IHE without its own investigation.

### **Article 11. Alternative products**

- 11.1 If serious circumstances force IHE to supply products that deviate from what has been agreed upon, it shall be authorized to do so, provided that the concerned modification(s) do not entail any change that could be of an inferior nature .
- 11.2 The supply of alternative, at least products of an equal standard/quality equal products, shall not entitle the other party to claim compensation or termination of the contract or to suspend its obligations towards IHE.

### **Article 12. Prices**

- 12.1 All prices shall be quoted in Euros and are inclusive of VAT and other government taxes unless expressly otherwise stated.
- 12.2 Unless otherwise stated, the prices shall be based on the purchase prices applicable at the date of the offer and order respectively, wages, labour costs, social security costs and other government charges, insurance premiums and other costs.
- 12.3 In case of an increase of one or more cost/price factors, IHE shall have the right to increase the order price accordingly in compliance with any applicable statutory provisions, on the understanding that any future price increases already known at the time of concluding the contract must be notified.
- 12.4 If the other party is to be considered a consumer within the definition of chapter 3, title 5 of Book 6 of the Civil Code [*Burgerlijk Wetboek*], that latter shall have the right to terminate the contract within three months of the date of signing the contract in case IHE proceeds to increase the price.

### **Article 13. Payment**

- 13.1 Payment must be made prior to delivery unless IHE consents to payment in arrears.
- 13.2 In both cases, payment must be made within seven days of the date of the invoice, in a manner as instructed by IHE and in the currency stated in the invoice.
- 13.3 Any objections to the amount of the invoices shall not have a suspensory effect on the payment obligation. This stipulation also applies if the invoice covers products delivered on demand or if it concerns partial deliveries.
- 13.4 If the other party fails to pay the invoice within seven days of the invoice date, the other party shall be legally obliged by law to pay interest at the rate of 2% per month, unless the statutory interest rate for commercial transactions is higher, in which case the statutory interest rate for commercial transactions shall apply. The interest over the claimable amount shall be calculated over the outstanding amount with effect from seven days following the invoice date until the date of payment. One A part of any the months shall be taken into account as a whole month.
- 13.5 The payments made by the other party firstly go initially to reduce the costs, next to reduce the interest due and finally to reduce the principal sum and the accrued interest. IHE may, without being in default, refuse an offer to pay if the other party proposes a different allocation.
- 13.6 The other party has no right to a settlement, unless this is expressly permitted in writing by IHE.

### **Article 14. Delivery and transportation**

- 14.1 Deliveries shall be made at an address to be stated by the other party by a carrier to be hired by IHE.
- 14.2 The costs of delivery and transports shall be payable by the other party. IHE shall include these costs in the offer.
- 14.3 If delivery by IHE at the address assigned by the other party proves to be difficult or impossible or difficult, IHE shall have the right to deliver at the nearest location accessible to IHE.
- 14.4 The delivery times stated by shall commence as soon as IHE has accepted the order in writing, provided the documents and details required by IHE for the performance of the activities are in possession of IHE and all formalities and other terms set by IHE have been duly complied with by the other party.
- 14.5 Delivery times included in statements from IHE are purely of an indicative nature and do not entitle the other party, in case of exceeding these delivery times, to termination of the contract or payment of compensation, unless expressly otherwise agreed.
- 14.6 All products not accepted or returned by the other party will be charged to the other party, unless otherwise agreed in writing. The other party undertakes to pay all damage resulting from refused not accepted or returned deliveries, unless the other party furnishes proof that the delivery is not in accordance with the contract.
- 14.7 IHE, in addition to the other rights, which in such cases result from the default of the other party under the law, shall have the right to terminate that part of the contract not yet executed by means of informal notice without recourse to judicial intervention.
- 14.8 IHE shall have the right to deliver the products in parts, unless deviation thereof has been agreed or the partial delivery has no independent value. IHE shall have the right to separately invoice the concerned partial delivery.

### **Article 15. Inspection, claims**

- 15.1 The other party is under obligation to immediately inspect or have inspected the products supplied by IHE at the time of delivery for visible defects and to subject these to usability and functionality tests. If the products do not comply with the contract, the other party must notify IHE of this (by fax or e-mail) within 48 hours of the time of the time of delivery.
- 15.2 If IHE finds the claims justified, it may, at its discretion, replace or repair the products covered by the claim at its discretion or reimburse the invoice amount.
- 15.3 Filing claims does not exempt the other party from any obligation under the contract concluded with IHE in regard to of the latter.
- 15.4 As regards claims, any partial delivery shall be regarded as a separate delivery.

### **Article 16. Expiry of rights**

If the other party fails to duly observe the aforementioned instructions concerning, for instance, the time and place of delivery, inspection, testing and/or filing claims, the right of the other party to inspection, testing or filing a claim shall expire and the products delivered by IHE shall be deemed to have been accepted by the other party.

### **Article 17. Samples and models**

If a sample or model has been distributed to the other party, it will be assumed to have solely been distributed solely by way of indication, without the product having to correspond to this designation, unless it is expressly agreed that the product will correspond to that sample of model.

### **Article 18. Warranty**

- 18.1 If during a period of one year following the delivery defaults occur in goods supplied by IHE that result from material or manufacturing defects, these goods or parts thereof will be replaced or repaired free of charge by IHE or a third party to be assigned by IHE. IHE shall have the right to assess whether or not such repair or replacement is required. In case of a replacement, the replaced goods or parts will become the property of IHE.
- 18.2 To goods supplied by IHE that originate from a third party, the warranty conditions of this third party shall apply.
- 18.3 All warranty obligations will lapse if the other party effects any alterations or repair work to the delivered goods or has these effected, or disassembles the products or causes it to be has it disassembled, the other party uses the product or causes it to be has it used in an improper manner or for purposes other than those designated by IHE, if the product is poorly maintained or overloaded, if normal wear and tear is involved and in case of any other cause that lies beyond the control of IHE, all this is at the discretion of IHE.
- 18.4 To make a warranty claim, the other party must notify IHE of the complaint in detail and in writing within seven days of the discovery of the cause for the complaints, whereby the concerned product concerned is to be submitted to IHE for inspection. The costs of shipment shall be for account of the other party will be liable for the costs of shipment.

### **Article 19. Retention of title**

- 19.1 All goods supplied by IHE shall remain the property of IHE until the other party has paid in full anything that is payable by the latter for whatever reason.

- 19.2 In the event of non-payment of a claimable amount, an application for a moratorium, an application to apply the Debt Rescheduling (Natural Persons) Act, application for bankruptcy, or an application for a guardianship order, death or closure of the (companies) of the other party, IHE shall have the right to cancel the order of the part thereof still to be delivered or executed and reclaim the part already delivered as its property with a settlement of any payment or payments made, without prejudice to all rights to compensation. In the above cases, each claim against the other party shall be due and payable immediately due and payable.
- 19.3 The other party shall not be authorized to dispose of or encumber any goods subject to retention of title or otherwise have these goods at its disposal, other than in the framework of its normal business practices. The other party undertakes to inform IHE as speedily as possible if any third parties imposing garnishment on goods supplied under retention or wishing to establish or claiming rights to such goods.
- 19.4 The other party undertakes to insure goods delivered under retention of title and to keep these insured against theft, fire, risk of explosion and water damage and to submit the insurance policy to IHE for inspection on its demand.
- 19.5 In the event that IHE wishes to exercise its ownership rights referred to in this article, the other party shall at this stage grant its unconditional and irrevocable permission to IHE or any third parties to be assigned by IHE to access all those locations where property of IHE is located and to duly seize these goods.

#### **Article 20. Liability and indemnification**

- 20.1 Non-delivery, late delivery or incorrect delivery, as well as not, not timely or improperly performing the activities shall not entitle the other party, insofar as force majeure is involved, to claim compensation and/or termination of the contract, the latter solely in the event that case the other party cannot be regarded as a consumer within the definition of section 3, title 5 of Book 6 of the Civil Code.
- 20.2 The other party shall indemnify IHE and/or its manager or managers and/or its subordinates against claims filed by third parties with regards to damage caused by the execution of the contract or the use of products supplied by IHE, insofar as far as this damage cannot be attributed to IHE. The other party is under obligation to compensate IHE for the consequences of such liability.

### **CHAPTER III TERMS AND CONDITIONS OF PURCHASE**

#### **ARTICLE 21. Terms and conditions of purchase**

The stipulations contained in this chapter solely apply solely to all offers made by IHE, contracts under which IHE purchases or takes up goods and/or services, as well as to the execution of these contracts.

#### **Article 22. Contracts**

- 22.1 Any order given (verbally) by IHE shall always be confirmed by means of a special order form. A contract shall not come into effect until the other party has confirmed it by signing the appropriate written purchase order from IHE and has returned the form to IHE within eight days, or, in the event that case such confirmation is lacking, the other party has started its execution of the contract.
- 22.2 The other party shall be bound by offers made to IHE in writing during the term stated therein, which term shall be subject to a minimum of four weeks. If the other party has not specified a term, the offer shall be deemed to be valid for four weeks.

22.3 IHE shall at all times be authorized to modify and/or supplement the assignment/order in consultation with the other party. Any supplements and/or modifications must be confirmed in writing.

#### **Article 23. Prices**

- 23.1 All prices are delivery free domicile exclusive of sales tax and inclusive of correct packaging.
- 23.2 The prices are fixed and are charged in Euros unless expressly otherwise stated otherwise. Differences in exchange rates differences will not be taken into account.
- 23.3 Price increases on account of additional work and/or additional supplies can only be charged on if accepted in writing by IHE, and must be notified in writing to IHE within seven days of the order date of the additional work and/or the additional service.

#### **Article 24. Payment**

- 24.1 Unless otherwise agreed, payment shall be made within 30 days of the date of receipt of the invoice in case of timely and correct performance, without prejudice of the right of IHE to settlement.
- 24.2 If at any moment interest is payable by IHE, this shall not exceed the general legal interest and not the legal interest applicable to commercial transactions.
- 24.3 The other party undertakes not to assign or pledge any claims it has against IHE to third parties without prior consent of IHE.

#### **Article 25. Delivery**

- 25.1 Delivery shall take place carriage paid at an address to be designated by IHE. If IHE has not stated a place of delivery, the office address of IHE at Mijlstraat 108 in 5281 RL BOXTEL shall be taken as the place of delivery. IHE determines in consultation with the other party the order and times of delivery.
- 25.2 The other party should therefore arrange for the transportation and shall take insurance against any transportation damage, which is at the expense and risk of the other party.
- 25.3 The other party undertakes to strictly adhere to the delivery terms specified mentioned in the purchase order.
- 25.4 The other party shall immediately inform IHE in writing of any imminent extension of the delivery time. If the delivery deadline is exceeded, the other party shall be in default without a notice of default being required. IHE shall have the right recoup any financial consequences of exceeding the delivery time, such as extra costs incurred by IHE, from the other party if the failure is caused by the other party. If the agreed delivery time is exceeded without prior acceptance by IHE, IHE shall in all cases have the right to fully or partially terminate the contract, without a notice of default or judicial intervention being required and without prejudice to any other legal rights such as compensation.

#### **Article 26. Tests**

- 26.1 IHE shall at all times have the right to test goods to be supplied to IHE or have these tests, both during the manufacturing, processing and storage thereof and after these goods have been delivered.
- 26.2 The other party shall authorize IHE or a third party to be assigned by IHE to access the place of manufacturing, processing or storage. The other party undertakes to co-operate in this free of charge.
- 26.3 IHE shall have the right to refuse products and/or fully or partially terminate the contract without a notice of default or judicial intervention being required and without prejudice to its other legal rights if it appears that the products do not comply with the requirements set in the purchase order and/or specifications.

### **Article 27. Warranty**

- 27.1 The other party guarantees that the supplied products supplied are suitable for their designated use, that they are free from any defects in construction, material and manufacturing and correspond to what has been stated in the order as regards quantity, description and quality.
- 27.2 The other party also ensures that the supplied products comply with any legal provisions pertaining to the products that apply at the time of delivery.
- 27.3 As regards any defects observed within three months of the time of delivery by IHE or its clients, the other party shall, within three days of the first notification by IHE, replace the faulty products or repair all defects or credit and repay the invoice amount, this at the discretion of IHE.

### **Article 28. Liability and indemnification**

- 28.1 The other party shall be liable for any damage resulting from each failure in the execution of the contract on its part, both in respect of direct and indirect damage suffered by IHE, its staff, clients or other third parties.
- 28.2 The other party shall indemnify IHE against all claims for compensation filed by third parties and/or fines resulting from defects or shortcomings in the products it has supplied and/or having occurred at the time of, during or as a result of the delivery of its products.

### **Article 29. Intellectual property**

The other party guarantees that the products supplied to IHE by the other party do not infringe any rights of intellectual or industrial property of third parties and shall indemnify IHE against all claims filed for this reason. The other party shall reimburse to IHE all costs and pay for all damages and interest that result from any infringement.

\*\*\*