

Mobile Fencing & Security

General terms and conditions of sale (“General Conditions”) of The Mobile Perimeter Protection Group B.V.,

a company registered in the Netherlands under company number 17051554 or its trade names from time to time, including ‘Heras Tijdelijke Beveiliging’ and ‘Heras Mobile Fencing & Security’ (“Trade Names”)

1. Scope

1. These General Conditions apply to all offers issued by the Supplier, including under its Trade Names, as well as to all contracts made between the Supplier and the Customer for the supply of goods and/or services (“Contracts”). Any exception or amendment to these General Conditions will only bind the parties if agreed in writing.
2. Reference to a Related Company means any subsidiary or parent company from time to time of the Supplier or the Customer.

2. Creation of a contract

1. There is a binding Contract with the Customer once an order is confirmed by the Supplier or once the Supplier, or any Related Company of the Supplier, commences performance of the Contract.

3. Prices

1. All prices are in Euro and exclusive of VAT.
2. The Supplier is entitled to pass on factors that increase the cost price, such as duties, taxes and surcharges, to the Customer.

4. Payment

1. Payment must be made within 30 days of the invoice date.
2. In the event of failure to pay within the time stated at Clause 4(1), the Customer will be in default and must pay:
 - a) compound interest of 1.5% per month with immediate effect; and
 - b) compensation for extrajudicial costs equal to 15% of the outstanding amount, with a minimum of €250.
3. The Customer must pay all amounts due to the Supplier in full, without any set-off, counterclaim, deduction or withholding in respect of any amounts owing to the Customer or its Related Companies.
4. Complaints in respect of invoices shall be submitted in writing, stating reasons, to the Supplier, within 5 working days of the invoice date, failing which the Customer may no longer rely on any inaccuracies in the invoices.
5. The Supplier is entitled to set off any amounts owing to it (or its Related Companies) by the Customer against any amounts payable by the Supplier (or its Related Companies) to the Customer.

5. Delivery

1. If the Customer has stipulated an explicit time of delivery, this time of delivery will never be fatal. Default of the Supplier is only effective after a written notice of default with an additional time of 7 days in which the Supplier can repair the default without liability or financial consequences.”
2. Goods shall be delivered to the Customer at the location specified in the order confirmation. Costs relating to the delivery are payable by the Customer.
3. If the Customer fails to accept or take delivery of the goods, delivery of the goods is deemed to be complete:
 - a) If goods are being delivered, on the date and time that delivery was attempted (if no time was stated, at 9:00 am); or
 - b) If the goods were to be collected by the Customer, at 9:00am the next business day after the Supplier notified the Customer that the goods were ready.
4. The Customer must also pay the Supplier’s reasonable storage and selling costs, or any other transport costs.

5. The condition and quantity of the goods noted by the driver shall be binding.
6. The Supplier has the right to deliver in instalments which may be invoiced separately by the Supplier. Any delay or defect in one instalment does not entitle the Customer to cancel any other instalment.
7. If the Customer has not stipulated an explicit time of delivery, deliveries shall be made on the basis of availability and in the order of receipt of the Orders. The Supplier reserves the right to make full or partial deliveries. The time of delivery shall be laid down as accurately as possible, but depends on the Suppliers supply and transport possibilities. The Supplier shall not accept any liability, nor can a current order be cancelled in the event of a delay in delivery. However, Supplier shall be obliged to inform the Customer of the delay as soon as it is aware of it itself.
8. Furthermore, in the product has not been delivered within two (2) months of the agreed delivery date, and this delay is not a result of “force majeure”, both parties shall have the right to request termination of the sale contract. If the Customer has made any down payments, it shall be entitled to demand payment of the with no entitlement to any other compensation or damages.
9. In any event, delivery shall only take place within the agreed delivery time if the Customer has fulfilled its obligations towards Supplier.

6. Risk and title

1. Risk in the goods will transfer to the Customer at the time of delivery referred to in Clause 5 above.
2. The Supplier retains ownership of all goods ordered by the Customer under the Contract until the earlier of:
 - a) The Supplier receiving payment in full and cleared funds for any goods or services provided and (subject to Clause 6(3)) in respect of which payment has become due; or
 - b) If the Customer sells the goods, ownership shall pass in accordance with Clause 6(8) below.
3. The Supplier’s retention of title in Clause 6(2) above also applies to claims it acquires (or its Related Companies acquire) against the Customer due to the Customer’s breach of contract.
4. Until ownership of the goods has been transferred to the Customer, neither the Customer nor its Related Companies may pledge, assign, transfer, mortgage, charge, subcontract, declare a trust over or grant any other rights in respect of the goods to any third party, subject to the provisions of Clauses 6(8) and 6(9) below.
5. Even where ownership of the goods has transferred in accordance with Clause 6(2) above, and the goods remain in the possession of the Customer or its Related Companies, the Supplier retains the right of pledge (as defined in Book 3, Article 237 of the Dutch Civil Code) as additional security for claims which the Supplier (or its Related Companies) may have against the Customer (or its Related Companies) from time to time. The Supplier is hereby irrevocably authorised by the Customer to perform the acts required to establish its right of pledge (expressly including the establishment of the right of pledge by authentic instrument or by registered private instrument) and also to act on behalf of the Customer. At the request of the Supplier, the Customer undertakes to use its reasonable endeavours to cooperate with the Supplier in respect of exercising this right.
6. Until ownership has passed to the Customer, the Customer must:
 - a) store the goods separately from all other goods so that they remain readily identifiable as the recognisable property of the Supplier;

- b) Not remove, deface, or obscure any identifying mark or packaging related to the goods;
 - c) Maintain the goods in satisfactory condition and keep them insured against all risks, including (but not limited to); fire, explosion, water damage, and theft for their full price on behalf of the Supplier from delivery;
 - d) Upon request of the Supplier, pledge any claims placed by the Customer with the insurer (on the basis of the policy referred to at Clause 6(6)(c) above) to the Supplier (as defined in Book 3, Article 239 of the Dutch Civil Code) as additional security for the claims of the Supplier against the Customer from time to time. The last two sentences of Clause 6(5) also apply to this Clause 6(6)(d);
 - e) Notify the Supplier immediately if it becomes subject to any insolvency proceedings, or if there is reasonable prospect that the Customer will avoid becoming insolvent; and
 - f) Provide to the Supplier any such information it may require from time to time relating to the goods, or the insurance policy referred to in Clause 6(6)(c).
7. If the Customer fails to comply with its payment obligations towards the Supplier or the Supplier has good reason to believe that the Customer will fail to comply with said obligations, the Supplier shall be entitled, at its sole discretion and without any liability arising on its part towards the Customer, to:
 - a) enter any premises of the Customer (or its Related Companies) where the goods are stored in order to repossess them
 - b) repossess the goods subject to this Clause 6. Following repossession, the Customer shall be credited for the market value of the repossessed goods, less the costs involved in recovering the goods. The credited amount will never exceed the purchase price.
 8. The Customer is permitted, within the normal operation of its business, to resell the goods. If the Customer resells the goods before the Supplier receives payment, ownership shall be deemed to pass to the Customer immediately before the time of the resale.
 9. The Customer undertakes not to assign or pledge to third parties any right of action which it obtains against its customers, to the extent that the Customer has not already pledged these to its financing bank, without the prior written consent of the Supplier. The Customer further undertakes, at the request of the Supplier, to pledge the said rights of action to the Supplier (as defined in Book 3, Article 239 of the Dutch Civil Code), as additional security for its claims against the Customer, on whatever basis. The last two sentences of Clause 7(5) shall also apply to this Clause 7(9).
 10. If the Supplier's retention of title ends due to the goods being mixed or combined with other goods, the Customer hereby grants to the Supplier a right of pledge over the new goods as security for all amounts due, now and in the future, by the Customer to the Supplier, on any basis whatsoever. The last two sentences of Clause 6(5) shall also apply to this Clause 6(10).
 11. The Supplier's retention of title shall not end by reason of payment from a third party, such as an insurer; instead the Supplier's retention of title is subrogated to that third party.

7. Force majeure

1. In the event of force majeure (as defined in Book 6, Article 75 of the Dutch Civil Code), including, but not limited to, war or threat of war, terrorism, riots, strike, flood, fire, malfunction or failure of energy supply, government measures and standstill orders, both parties are entitled to suspend their obligations for the duration of the force majeure, but not exceeding one month.
2. If performance has become permanently impossible or if a temporary impossibility has lasted for longer than one month from the scheduled delivery, the parties shall have the right to dissolve all or that part of the contract not yet performed, without either party being entitled to compensation. The Customer's obligation to make payment in respect of goods already delivered survives the termination of the contract due to force majeure.

8. Liability

1. In this Clause 8, loss shall include loss due to breach of contract, termination of contract or negligence.
2. The Supplier shall only be liable for loss suffered by the Customer if the Customer can prove intent or gross negligence on the part of the Supplier.

3. The Supplier expressly excludes liability for consequential loss of the Customer, which includes, but is not limited to, loss of profits, stagnation, labour costs, interest costs and repair costs, transport costs or penalties.
4. In any event, liability for loss is expressly limited to the amount that the insurance pays out in the given case, plus any excess. If for any reason whatsoever no payment is made under the insurance, the liability for loss is expressly limited to the invoice amount excluding VAT.
5. Claims for damages shall be brought before the court specified and competent in accordance with these General Conditions by the Customer within 1 year of the claim arising. After the period referred to in the preceding sentence, the claim for damages will be time-barred.

9. Inspection and complaints

1. Unless the Customer expresses specific reservations at the time of delivery, the goods supplied by Supplier shall be deemed to correspond with the Order Confirmation, both as to quality and quantity.
2. The Customer must immediately, but no later than within 12 hours after delivery, thoroughly inspect the delivered goods for discrepancies such as defects, incorrect quantities or wrong sizes and compare these with the placed order and shipping documents. Any discrepancy must also be immediately reported in writing to the Supplier, failing which the delivery should be considered correct, factually and legally in the absence of evidence to the contrary from the Customer.
3. The same conditions as set out in Clause 9(1) above apply to hidden defects, with the proviso that the period for lodging a complaint starts immediately but no later than 12 hours after discovery of the defects.
4. For all other complaints, such as incorrect invoicing, a period for lodging a complaint of 5 working days after discovery of the discrepancy applies, failing which the invoice may be considered correct, factually and legally.

10. Termination of contract and its consequences

1. The Supplier is entitled to terminate the contract without judicial intervention if the Customer is declared bankrupt, applies for a suspension of payment, the "wettelijke schuldsaneringsregeling" (Debt Rescheduling Natural Persons Act) has been declared applicable or otherwise has lost the power to dispose of its assets or part thereof.
2. In that case, the Customer shall not be entitled to terminate the contract - in respect of any goods already delivered or otherwise - without the agreement of the Supplier.
3. Following termination, any payments due between the parties become immediately due and payable. The Customer will be liable for loss suffered by the Supplier, including loss of profits and transport costs.

11. Applicable law and choice of court

1. All Contracts are governed exclusively by Dutch law. The Vienna Sales Convention is expressly excluded.
2. Any disputes between the parties arising under, or directly or indirectly related to, a Contract will be settled by the Dutch courts.

12. Authentic language and miscellaneous

1. If these General Conditions are also provided in a language other than the Dutch language, the Dutch version hereof will always be decisive in case of any dispute over interpretation or explanation.
2. If any of the above provisions is declared void, illegal or unenforceable by a court, the remaining valid provisions shall continue to bind the parties. Where possible, provisions that have been held to be void or unenforceable will be deemed modified to the minimum extent necessary to makes it valid, legal and enforceable, having regard to the scope and intentions of the parties and these General Conditions.
3. Cross-border transactions with non-Dutch Customers may be subject to additional, specific terms to be agreed with the Customer in writing.