

General Terms and Conditions

(Dog sale)

Applicability

Article 1

1. These general terms and conditions shall apply to all offers, including order confirmations, and contracts of sale submitted or concluded by V.o.f. Police Dog Center and Hondenspension 'De Bergakkers', hereinafter to be referred to as: the user, with respect to the guard dogs trained by the user, hereinafter to be referred to as: the dogs.
2. The present general terms and conditions shall apply to all subsequent offers and agreements submitted by or concluded with the same other party, irrespective of whether these are connected with or are subsequent to previously submitted offers or concluded agreements.
3. Changes or additions to these general terms and conditions must be explicitly confirmed by the user in writing and shall only apply to the offer or agreement for the submission or conclusion of which the change or addition is made.
4. If and in so far as general terms and conditions applied by the other party are contrary to the present general terms and conditions, the general terms and conditions of the other party shall not be applicable.

Offers

Article 2

1. All offers of the user are without obligation, unless explicitly stated otherwise in the offer; in that case the offer shall be valid for the duration of one month, effective from the offer's date. The stipulations in the third paragraph of the present article shall apply mutatis mutandis to an acceptance of the other party that is not done within the period stipulated for this purpose
2. An agreement is not concluded until after the user confirms in writing that he accepts the other party's offer or order.
3. The information provided with the offer by or on in the name of the user with respect to names, breeds and pedigrees and other special characteristics, photographs, tattoo numbers/chip barcodes for the purpose of identification or dog certificates, prospectuses and the like that are connected with the above, remain the property of the user and, in the event that the agreement is not concluded, are to be returned by the other party immediately. These documents provided by or in the name of the user cannot in any way, shape or form, whether wholly or in part, be reproduced, publicized or provided to third parties or used otherwise, without the explicit written consent of the user. The foregoing under pain of an immediately payable penalty which is not open to moderation of 50% of the offered price, including turnover tax, without prejudice to the right to claim damages for the remaining part.
4. All prices offered are exclusive of turnover tax, unless explicitly stated otherwise.
5. The other party guarantees the correctness of the information, registrations and specifications it has provided.

Price and price adjustment

Article 3

1. Unless explicitly agreed upon otherwise, all prices are in Netherlands currency. All agreed prices are exclusive of any turnover tax applicable and any costs of transport and/or packaging.
2. If the delivery takes place after the point of time as referred to in article 4 of these terms and conditions, the user reserves the right to raise the agreed prices, if one or more cost-determining factors give reason to do so.
3. The user shall notify the other party in time and in writing if and in so far as he exercises the right to implement price increases as laid down in the second paragraph of the present article. If the price increase results in a price difference with the agreed price of more than fifteen percent (15%), at the request of the other party, submitted within 7 days after the written notification, the user will dissolve the agreement.

Delivery and risk

Article 4

1. The user declares the CIF or the FOB conditions applicable to the delivery of the dogs, as mentioned in the offer or in the written confirmation of the user as referred to in the second paragraph of article 2 of the present terms and conditions. In the event that neither of these conditions (CIF or FOB) is declared applicable by the user or if not covered by the conditions (CIF or FOB) that are declared applicable, the stipulations (of delivery and risk) as laid down in the present terms and conditions shall apply. In the event that the conditions (CIF or FOB) that are declared applicable deviate from the conditions as laid down in this article, the conditions that are declared applicable (CIF or FOB) shall prevail, provided that the conditions that are declared applicable (CIF or FOB) are to be interpreted as much as possible in the light of the present terms and conditions, with the stipulations of these terms and conditions that do not deviate remaining in full force.
2. The delivery of the dogs and the accompanying certificates and the like takes place at the place and time mentioned in the offer.
3. If no place and/or time of delivery is mentioned in the offer or such document does not exist and the parties have not agreed otherwise in this respect in the written confirmation as referred to in the second paragraph of article 2 of these terms and conditions, delivery shall take place from the user's company and at the user's discretion, within a reasonable period after the agreement is concluded, needed to select and specifically train the dogs for the purpose and the context in which the other party wishes to use the dogs. The reasonable period in which the delivery is to take place, will be aimed for by the user in accordance with the requirements of reasonableness and fairness, but shall not be binding to him. The reasonable period of delivery shall not commence before the moment on which the user has all information, licenses, instructions, documents, exemptions, assignments and supplies necessary for the delivery and transport of the deliverable dogs in his possession. The delivery takes place while the means of transport is still unloaded, but in any case immediately preceding the moment on which a start is made to load the dogs into a means of transport that is provided by or on behalf of the other party or by the user.
4. Unless explicitly agreed upon otherwise, the user shall be entitled to deliver the deliverable dogs separately, in which case every delivery can be invoiced separately.
5. The other party shall be obliged to take delivery of the dogs it has ordered within the period stipulated in the present article.
6. If the other party does not take delivery or possession of the dogs (in time or at the agreed location), because the other party does not render the necessary assistance or because another impediment arises on the side of the other party, the other party shall be in default by operation of law and the user shall be entitled to transport and store the dogs from the place and from the point in time or any time earlier the delivery is to take place, to and in a location to be determined by the user, all this at the expense and risk of the other party. The user shall then be entitled to be compensated for the damage incurred by him. This compensation shall amount at least to the costs of transport and storage as referred to above, increased with an amount of € 500, without prejudice to the right to claim damages for the remaining sum. Notwithstanding the foregoing, the user shall be entitled to dissolve the agreement on the basis of which the delivery takes place, without judicial intervention and to take back and resell the deliverable dogs. The other party shall then be obliged to pay a compensation in the amount of all lost profit and costs incurred in the matter. This compensation shall amount to at least € 1,000, without prejudice to the right to claim damages for the remaining sum.

Any full or partial advance payments, as referred to in article 11 of these terms and conditions, shall be used by way of previously determined compensation for the user and shall therefore be deducted from the compensation payable by the other party under the present paragraph.

7. The risk of loss, including harm to the health and condition of the deliverable dogs, is at the expense of the other party from the agreed place and time of delivery
8. An exceeding of the period stipulated for the delivery does not give the other party the right to suspend its obligations arising from the agreement.
9. An exceeding of the period in which the delivery is to take place shall never result in liability of the user for direct or indirect consequences of the tardy delivery.
10. The costs related to the delivery of the dogs, including the costs of transport, insurance, registrations, obtaining the required documents and licences, packaging, tackling, loading and unloading activities, are payable by the other party.

Return shipment

Article 5

1. Return shipment of dogs already delivered by the user are only accepted after written consent of the user. This written consent shall only be granted if a clinical examination in accordance with article 8, paragraph 2 of these terms and conditions, during which the returned dogs are examined for tinea and the most frequent ailments and diseases, proves that the dogs have retained the soundness guaranteed by the user in the agreed quality. The costs of this examination are payable by the other party. Also the written consent as referred to in the previous sentence shall not be granted until all documents have been proven correct. If it is determined that the returned dogs no longer have the guaranteed soundness and previously agreed quality, the user will not accept the return shipment of the dogs. The user shall inform the other party of the reasons of non-acceptance in writing.
2. These return shipments are fully at the expense and risk of the other party.

Packaging

Article 6

The packaging, in so far as applicable, remains the property of the user. The other party is to use this packaging with due care and return it to the user as soon as possible at his expense.

Retention of title

Article 7

1. As a security for the correct and complete fulfilment of the other party's obligations, the user retains the title of the delivered goods until the moment the other party has fulfilled its obligations. For this purpose obligations are also understood to mean obligations with respect to the consideration that is due to the user regarding:
 - a. the price payable under this agreement;
 - b. the goods delivered or deliverable and the information provided or to be provided under this agreement;
 - c. the work to be performed for the benefit of the other party under this agreement;
 - d. the claims for failure to comply with this agreement.
2. In the event that the user has claims against the other party that are subject to a retention of title, and also

claims against the other party that are not subject to a retention of title, any payment from the other party shall first serve to settle the claim that is not subject to a retention of title.

3. If the claims, in connection with which the ownership of the delivered dogs is retained, are fully settled by the other party, the user shall - if he considers this desirable - reserve a non-possessory pledge for the purpose of security for the current and future claims of the user against the other party, at the moment he transfers the ownership of the delivered dogs. In that case the other party shall be obliged to grant his assistance to the establishment of this non-possessory pledge, on pain of an immediately payable penalty that is not open to moderation of 50% of the net invoice amount for the delivered dogs of which the ownership is retained.
4. As long as the title of the delivered goods has not been transferred to the other party, the other party shall not be allowed to transfer the ownership of the delivered goods or to encumber them with a real right or a right pertaining to the law of obligations or alienate the delivered goods, under any title whatsoever.
5. As long as the ownership of the delivered goods has not been transferred to the other party, the other party shall be obliged to keep the delivered dogs on behalf of the user with due care and as clear property of the user. Any identification codes or tattoos or signs that have been applied to the delivered goods, are to remain visible for everyone.
6. As long as the ownership of the delivered goods has not been transferred to the other party, the other party shall be obliged to store the delivered goods separately and clearly recognizably.
7. The user shall be entitled to take back the goods that were delivered under a retention of title if and in so far as the other party continues to fail in the fulfilment of any obligation towards the user, or according to the user's judgement has financial difficulties.
8. The other party grants the user now for then the irrevocable right to enter the business premises of the other party or to have a third party to be assigned by the user enter the business premises of the other party, if the user wishes to take back the delivered goods or if the user wishes to check the actual presence of the delivered goods in those business premises.

Guarantees and obligation

Article 8

1. The parties have established that at the moment the agreement is concluded the dogs do not show any external or clearly visible flaws or defects and that the accompanying certificates and the like are in good order, unless explicitly agreed upon otherwise.
2. The user guarantees the soundness and the agreed quality, including the health of the dogs and also the correctness of the accompanying documents, of the delivered goods at the time of delivery and only if the other party proves that the flaw in the delivered goods has been caused by the user. The guarantee with respect to the health, implies that the user is responsible for:
 - a. worming the dogs;
 - b. vaccinating the dogs;
 - c. The dogs having been clinically examined for the most frequent ailments and diseases; the above being proven by the reports, documents and other evidence - hereinafter to be referred to as: guarantee certificate - the user is to present at the moment of delivery or any time earlier.
3. The other party shall be obliged to keep, look after and treat the dogs as befits a good animal lover. Not covered by the guarantee are ailments or diseases that can wholly or partially be traced back to actions of the other party.
4. If and in so far as a supplier is obliged to provide any form of guarantee to the user with respect to the delivered goods, the guarantee provided by the user shall never exceed the guarantee provided by this supplier.
5. The user shall be entitled to remedy the ailment or disease of the delivered good at his discretion by free restoration or full replacement of the delivered good. At his discretion the user can also fulfil its guarantee obligation by repaying the price.
6. Every claim under a guarantee lapses 6 months after delivery, during which period the other party is to subject the dogs to a clinical examination at his own expense, and if the other party is unable to submit a guarantee certificate that is dated and signed by the user. The user provides the guarantee certificate referred to above on delivery or any time earlier.
7. Replacement or restoration of the delivered goods under these guarantee stipulations does not extend the agreed guarantee period.
8. During the period in which the other party fails to fulfil any obligation arising from the present or any other agreement related to this agreement, the user shall not be held to provide any guarantee.
9. Any liability towards the other party with respect to a defective delivery shall always be limited to the guarantee obligations as referred to above.

Liability

Article 9

1. The user's liability for all direct costs and losses, related in any way whatsoever with or caused by an error or failure in the fulfilment of the agreement, shall at all times be limited to the amount for which the user has insured himself against such loss-causing incidents, or if no security is granted because user has failed to fulfil any obligation towards the insurer, the amount for which entrepreneurs otherwise comparable to the user tend to insure themselves
2. The user shall never be liable for all indirect costs and consequential losses, related in any way whatsoever with or caused by an error or failure in the fulfilment of the agreement.
3. The other party indemnifies the user against all claims of third parties to damages or otherwise, which are related directly or indirectly, mediately or immediately, to the fulfilment of the agreement between the user and the other party.
4. The other party shall be liable for the health or loss of the dogs, unless the harm to the health or loss is due to gross negligence or intention of the user.

Force Majeur

Article 10

1. If and in so far as the user is unable to fulfil his obligations arising from the agreement or is not able to fulfil his obligations arising from the agreement fully or in time or at the agreed location as a result of a cause that is not imputable to him, the user shall be entitled to dissolve the relevant agreement without judicial intervention and without being liable for damages, or to suspend the obligations arising from the relevant agreement for a period he considers reasonable. -
2. Causes that are not imputable to the user include: every unforeseeable discontinuation in the regular procedures of the user's company or in the company of a third party that supplies goods or services to the user, and also clear changes since the conclusion of the agreement in the actual circumstances which influence the cost-determining factors or delivery possibilities directly or indirectly.
3. Causes that are not imputable to the user include: fire, water damage, special weather conditions, disasters, war and threat of war, infectious (animal) diseases, government measures including standstill orders, riots, acts of war, strikes, lockouts, work-to-rule, defects in machines or installations, disruption or discontinuation in the supply or rationing of raw and ancillary materials and fuels and non-fulfilment of an obligation by a third party that supplies goods or services to the user.
4. In the event that one of the abovementioned circumstances arises the user shall notify the other party without delay on submission of the available evidence.

Payment

Article 11

1. All payments are to be made within six weeks after delivery, unless explicitly agreed upon otherwise in writing, and without the right of discount or setoff, also in case of a bankruptcy, at the office of the user or by means of a deposit into a bank account assigned by the latter. The deposit is to be credited to the user's bank account within the period of six weeks.
2. If the other party has not paid within the period stipulated in the first paragraph of the present article, he shall be in default by operation of law and without a warning or notice of default being required, the user shall be entitled to charge the other party with an interest of two percent per month from the due date, until the date payment is completed and without prejudice to the user's other rights.
3. All costs resulting from the user from non-fulfilment, untimely fulfilment or improper fulfilment by the other party of any obligation arising from this agreement for the other party, are at payable by the other party. These costs include the costs of warning, termination, collection and bailiff, and also the costs of the counsel/attorney and procurator and all other extrajudicial and judicial costs. The other party shall be in default in case of non-fulfilment or improper fulfilment.
4. If and in so far as the other party is in default of payment, also in case of a bankruptcy, petition for suspension of payment(s) and its company being closed down or wound up, all claims the user has against the other party shall remain immediately payable.
5. The user reserves the right to require full or partial advance payments of the agreed price.
6. At the first request of the user, the other party shall be held to furnish real security or issue a bank guarantee for all that which is due to the user on the grounds of this agreement or otherwise.
7. The user shall be entitled to set off all payable claims from the other party against the user against all claims the user has against the other party that can be expressed in terms of money.
8. The user shall be entitled to suspend the fulfilment of the obligation to surrender a good until the other party has fulfilled all its obligations towards the user, irrespective of their origin.

Language, applicable law and forum agreed upon

Article 12

1. These general terms and conditions can also be laid down in another language, on the understanding that in the event of a difference in interpretation, the Dutch language is to be considered conclusive.
2. Netherlands law shall apply to all agreements between the user and the other party
3. All disputes arising from the agreements between the user and the other party that are beyond the competence of the subdistrict court [Dutch: kantonrechter], in the first instance are to be brought before and settled by the district court [Dutch: arrondissementsrechtbank] of the district in which the user's company is situated in the Netherlands.