



**Hortus Supplies International bv**  
Noordpolderweg 21 | 1432 JH Aalsmeer  
The Netherlands  
**T:** +31 (0) 297 52 49 19  
**website:** [www.hsibv.com](http://www.hsibv.com)  
**E-mail:** [info@hsibv.com](mailto:info@hsibv.com)

## **General Terms and Conditions** **Hortus Supplies International B.V.**

### **1. Definitions**

- a. In these general terms and conditions, the following terms – provided they are capitalised – will have the following meanings:

General Terms and Conditions: this version of HORTUS's general terms and conditions;

HORTUS: the private limited liability company Hortus Supplies International B.V., having its registered office in Aalsmeer;

Agreement: the agreement between the Parties;

Parties: HORTUS and the Other Party;

Supplier: a supplier of HORTUS or another third party on which HORTUS depends for the performance of the Agreement;

Other Party: the party with which HORTUS has concluded the Agreement;

Unless the context indicates otherwise, terms referring to the singular include the plural and vice versa.

### **2. General Terms and Conditions and formation of Agreement**

- a. The General Terms and Conditions apply to all offers issued by HORTUS and to the Agreement.
- b. HORTUS's offers will always be free of obligation and will be valid for a maximum of one (1) month, unless HORTUS has specified a different period.

### **3. Force majeure**

- a. The following situations constitute force majeure for HORTUS:
- i. unforeseen circumstances of any nature which prevent HORTUS from fulfilling its obligations under the Agreement, or from doing so in time or without onerous additional efforts and/or costs;
  - ii. strike action at HORTUS or at a Supplier;
  - iii. illness among HORTUS staff or a Supplier's staff;
  - iv. a Supplier going bankrupt;
  - v. a force majeure situation as described in this article affecting a Supplier;
  - vi. a Supplier's failure to fulfil its obligations for any reason whatsoever;

*All agreements are subject to our general terms and conditions. Our general terms and conditions can also be consulted on our website*



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vii. any other failure in the fulfilment of an obligation arising from the Agreement that is beyond HORTUS's control and should not be at HORTUS's expense in terms of the law, a legal act or common opinion.

b. If the force majeure affecting HORTUS is of a permanent nature or has lasted for a consecutive period of thirty (30) days, or if it is certain that the force majeure situation will last at least thirty (30) days, either Party will be entitled to end the Agreement with immediate effect through dissolution or notice of termination.

#### **4. Delivery and delivery deadlines**

- a. HORTUS will start delivering the items concerned or performing the services agreed as soon as possible after the formation of the Agreement.
- b. All delivery deadlines and other deadlines applied by HORTUS are target deadlines only and as such are expressly not final deadlines.
- c. If the Agreement provides not only for the delivery of items but also for their installation, delivery will be deemed to have taken place as soon as the item has been installed in working order and has been transferred after joint testing, or, if no testing occurred, after the item has been used by the Other Party. The installation will in any case be deemed to have been used eight days after the item was installed.
- d. HORTUS will be entitled to suspend the delivery of the items or services concerned for as long as the Other Party has not fulfilled all its payment and other obligations under the Agreement.

#### **5. Retention of title and risk**

- a. HORTUS will retain the title to all the items supplied to the Other Party until the Other Party has completely fulfilled all its payment obligations and other obligations towards HORTUS under the Agreement, including claims resulting from failure to fulfil any obligation under the Agreement.
- b. The agreed form of transport (ex-works, free carrier, etc.) will be decisive for the Parties' rights and obligations relating to the delivery of the items concerned. The description of the rights and obligations in the Incoterms of the International Chamber of Commerce will be the guiding principle in this context, unless the Agreement or the General Terms and Conditions provide otherwise.
- c. The risk attached to the items supplied or provided by HORTUS to the Other Party will in any case pass to the Other Party from the moment of actual delivery or provision to the Other Party. In this article, 'risk' also includes losses due to storm, water, fire and/or theft.

#### **6. Complaints**

- a. If the Other Party detects a defect in an item supplied by HORTUS, the Other Party must notify HORTUS of this in writing within seven days after detecting the defect, providing a clear description of the defect detected.
- b. If no such written notification is made in time as stipulated in this article, HORTUS will be deemed to have correctly fulfilled all its obligations towards the Other Party under the Agreement.



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## **7. Warranty**

- a. HORTUS will only have warranty obligations if and insofar as these were expressly agreed when the Agreement was concluded and a clear warranty period was specified on that occasion.
- b. The warranty obligations comprise the following:
  - i. If the agreed performance consists of contracting work, HORTUS will guarantee the reliability of the construction delivered and the materials used during the warranty period. If the construction delivered or the materials used turn out not to be reliable, HORTUS will repair or replace them. The components to be repaired at HORTUS or to be replaced by HORTUS must be sent to HORTUS postage paid. The costs of removing or assembling these components and any travel and subsistence expenses will be payable by the Other Party.
  - ii. If the agreed performance consists of the treatment/repair of materials supplied by the Other Party, HORTUS will guarantee the reliability of the item supplied during the agreed warranty period. If the item supplied turns out not to be reliable, the item must be returned to HORTUS postage paid. HORTUS will then decide whether to repair the item, to replace the item or to credit the Other Party for a proportional part of the invoice.
  - iii. If the agreed performance consists of the supply of items, only the warranty issued by the Supplier in this respect will apply. The Other Party can only invoke the warranty if and insofar as it has fulfilled all its payment and other obligations under the Agreement. No warranty will be given in respect of defects resulting from normal wear and tear, improper use, failure to perform maintenance or incorrectly performed maintenance, or if the installation, assembly, alterations or repairs were carried out by the Other Party itself or by a third party not engaged by HORTUS.

## **8. Price and payments**

- a. Price estimates will always be based on the prices applicable at the time of the offer or at the time of the conclusion of the Agreement.
- b. Unless expressly stated otherwise, the prices of items specified by HORTUS will always be ex works. HORTUS is entitled to pass on to the Other Party the costs of transport, insurance, etc. and – where applicable – the costs of installation.
- c. If any price increases occur between the time of the conclusion of the Agreement and the time of the fulfilment of the obligation under the Agreement on HORTUS's part – for example with regard to tax charges, excise duty, raw materials and/or transport costs – HORTUS will be entitled to pass these price increases on to the Other Party. If the aforesaid price increases are not proportional to the level of the price estimates at the time of the conclusion of the Agreement, either Party will be entitled to terminate the Agreement.
- d. The Other Party must pay HORTUS the amounts charged within the payment term specified on the invoice, without the Other Party being entitled to any set-off and/or suspension. A payment term of fourteen days will apply unless the invoice specifies a (different) payment term.



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- e. If the Other Party fails to pay within the payment term referred to in the previous paragraph, the Other Party will be in default by operation of law and, without any further notice of default, will owe commercial interest at the statutory rate plus 3% on the amount owed with effect from the due date, subject to a minimum of 0.8% per month. In that case, the Other Party will also owe HORTUS the extrajudicial collection costs, which are set at 15% of the amount owed, subject to a minimum of EUR 500.00. Without prejudice to the foregoing, the Other Party will be obliged to reimburse HORTUS for all costs reasonably incurred by the latter, including the full costs of legal assistance.
- f. HORTUS is entitled at any time to ask the Other Party to furnish security for the fulfilment of its payment and other obligations under the Agreement. The Other Party will be obliged to provide the requested security to HORTUS without delay. If the Other Party fails to furnish adequate security without delay, HORTUS will be entitled to suspend its obligations under the Agreement until the Other Party eventually complies with this request.

## **9. Liability**

- a. HORTUS will never be liable to the Other Party for consequential losses, indirect losses and trading losses, including – but not limited to – lost profit, business interruption, loss of goodwill and reputational damage.
- b. If and insofar as HORTUS bears any liability on whatever ground, this liability will be expressly limited to the amount paid out by HORTUS's liability insurer or other insurer in the case concerned.
- c. If HORTUS's liability insurer or other insurer does not make any payout, for whatever reason, any liability on HORTUS's part will be limited to a maximum of twice the invoice amount of the Agreement, at all times with a maximum of EUR 15,000.00 per event or series of events with the same cause.
- d. HORTUS will never be liable for losses sustained by the Other Party or any third party as a result of the incorrect and/or inexpert use of items or services supplied by HORTUS. HORTUS will never be liable for losses resulting from normal wear and tear, improper use, failure to perform maintenance or incorrectly performed maintenance, or if the installation, assembly, alterations or repairs were carried out by the Other Party or by a third party not engaged by HORTUS.
- e. Any claim for compensation pursuant to liability on HORTUS's part for defects in the items supplied or services performed will lapse through the expiry of one year after the moment when the items were supplied or the services were performed.
- f. If the Agreement also provides for the installation of items and/or the performance of other services, the Other Party indemnifies HORTUS, its staff and third parties engaged by it against losses they sustain, whether or not in the course of their activities, on the Other Party's business premises or at the location where the activities are to be performed.



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## **10. Termination of Agreement**

- a. HORTUS will be entitled to terminate the Agreement with immediate effect if:
  - the Other Party is declared bankrupt;
  - the Other Party applies for a moratorium;
  - the Other Party ceases or otherwise winds up its operations;
  - the Other Party loses the power to dispose of its assets or a substantial part of its assets due to an attachment or for any other reason.
- b. In the event that HORTUS terminates the Agreement, the Other Party will be obliged to pay HORTUS all the amounts owed to HORTUS, plus the interest and extrajudicial and other costs stipulated in the General Terms and Conditions, as immediately due and payable debts, without prejudice to HORTUS's right to full compensation, including any other costs, losses and interest incurred as a result of the termination.

## **11. Miscellaneous**

- a. Amendments or additions to the Agreement and the General Terms and Conditions will only be binding on the Parties if and insofar as they have been laid down in writing.
- b. If one or more provisions of the General Terms and Conditions proves to be or become non-binding, irrespective of the reason, the remaining provisions will remain in full force between the Parties. In that case, the Parties undertake to replace a non-binding provision by a provision that is binding and that – in view of the tenor and purport of the General Terms and Conditions – resembles the non-binding provision as closely as possible.
- c. If the Other Party comprises several parties, each of these parties will be jointly and severally liable to HORTUS for the fulfilment of the obligations under the Agreement, including the provisions of the General Terms and Conditions.
- d. The Other Party is not authorised to transfer its rights and obligations under the Agreement to a third party without the prior written consent of HORTUS.

## **12. Dutch law and competent court**

- a. The Agreement is governed exclusively by Dutch law.
- b. The District Court of Amsterdam, The Netherlands, will have exclusive jurisdiction in the first instance to hear all disputes arising from or relating to the Agreement.

Aalsmeer, May 2024