

GENERAL TERMS AND CONDITIONS OF DELIVERY HYPERPRO SALES B.V.

Located at Hulsenboschstraat 26 in (4251LR) Werkendam

Registered by the Chamber of Commerce under number 24354202

ARTICLE 1. DEFINITIONS

In these general terms and conditions, the hereafter following terms are used in the following explanations, unless explicitly noted otherwise or appear to be different in context:

1. **Hyperpro:** The private company with restricted liability, Hyperpro Sales B.V., contractual counterparty of the agreement with the buyer and user of the general terms and conditions of delivery according to article 6:231 sub b BW.
2. **Buyer:** The natural or legal person who instructs Hyperpro to carry out any work, provide services, or receives goods from Hyperpro and is counterparty in the agreement with Hyperpro.

ARTICLE 2. APPLICABILITY

1. The present general terms and conditions are applicable on all offers, agreements and deliveries with Hyperpro of any kind, unless the application is whole or in part specifically excluded in writing or explicitly agreed on otherwise.
2. Any possible general terms and conditions of the buyer, however named, are expressly rejected. Deviations of and additions to these terms and conditions only apply if and when these are agreed to by Hyperpro expressly and in writing.
3. When Hyperpro allows implied deviations of general terms and conditions for any length of time, it still gives the unimpeded right to demand strict and immediate compliance with these terms and conditions. The buyer cannot derive any rights on how Hyperpro applies these terms and conditions.
4. Present terms and conditions also apply to all agreements with Hyperpro, with which third parties should be involved. These third parties can relay the terms and conditions directly from the buyer.
5. If one or more of the conditions in the terms and conditions or any other agreement made with Hyperpro is in breach of a mandatory legal provision or any applicable legal regulation, then the relevant condition will be voided and be replaced by a new, legally permissible and comparable condition made by Hyperpro.
6. The buyer with whom the general terms and conditions were contracted once, will be assumed to give tacit consent to the applicability of the general terms and conditions made by Hyperpro in a later agreement.
7. In case of a conflict between the contents of an agreement made between the buyer and Hyperpro and the general terms and conditions, the contents of the agreement will prevail.

ARTICLE 3. OFFERS AND QUOTES

1. All offers and quotes from Hyperpro are revocable and free of obligations, unless it is otherwise stated in writing.
2. The buyer must either directly or indirectly provide accurate and complete measurements, requirements and specifications of the performance and other data to Hyperpro on which Hyperpro bases its offers.
3. A compiled price quote does not obligate Hyperpro to supply part of the offered or quoted goods included in the offer, nor perform part of the required work for a corresponding portion of the quoted price.
4. The contents of the delivery are determined only by the given description of the delivery or assignment in the quote and order confirmation. If the acceptance differs (on minor points) with the quoted offer, Hyperpro is not bound to it. The agreement does not come into existence in accordance with this deviating acceptance unless Hyperpro indicates otherwise.
5. Obvious errors or incorrect descriptions in the Hyperpro's offer does not bind Hyperpro.
6. The prices in the offers and quotes from Hyperpro are excluding VAT and other government taxes, as well as excluding any costs incurred in the framework of the assignment, including transport and packaging costs, unless otherwise stated.
7. Offers and quotes do not automatically apply for future repeating orders.

ARTICLE 4. ESTABLISHMENT OF THE AGREEMENT

1. Subject to the following, an agreement with Hyperpro comes first after Hyperpro has accepted an assignment in writing which respectively is confirmed. The order confirmation is deemed to reflect the agreement correctly and completely, unless the buyer protests immediately and in writing.
2. Any subsequent additional agreements or added changes bind Hyperpro only, if these have been confirmed in writing by Hyperpro within fourteen (14) days and the buyer has not protested this in writing within three (3) working days.
3. For agreements, activities, or transactions for which by size and nature no written quote or order confirmation is sent, the invoice is deemed to reflect the agreement correctly and completely, unless written protest is made within seven (7) working days after the invoice date.
4. Each agreement Hyperpro enters with the suspensive condition that Hyperpro is authorized to check the buyer's credit worthiness, in connection with the financial obligations of the agreement. Should Hyperpro be of the opinion, on reasonable grounds, that the buyer is not (sufficient) credit worthy, then Hyperpro has the right to temporarily suspend obligations. If such a suspension is necessary, then Hyperpro will inform the buyer immediately, and give the buyer the opportunity to provide security.

ARTICLE 5. DELIVERY AND DELIVERY TERMS

1. Unless agreed on otherwise, delivery takes place from the warehouse in Werkendam (EX Works – Incoterms 2010). Unless both parties have agreed otherwise in writing explicitly, any costs for the transport of the goods to be delivered, and all coherent costs such as for packaging, insurance, etc. are the buyer's responsibility.
2. If the delivery of goods is made to a delivery address specified by the buyer, the buyer needs to ensure that the location where the goods are to be delivered is well accessible and drivable for transport or supply transport for the goods over a paved road.
3. If Hyperpro has specified a term for delivery or execution of the agreement, then it is merely indicative. Therefore a given delivery time can never be considered a deadline. In case of exceeding a deadline, the buyer must breach Hyperpro in writing. Hyperpro must then provide a reasonable time to still implement the agreement.
4. Hyperpro has the right to let certain work be completed by third parties if it is required, by Hyperpro's judgement, for a proper implementation of the agreement.
5. The buyer ensures that all the information, of which Hyperpro indicates they are necessary or of which the buyer should reasonably understand that they are necessary for the implementation of the agreement, is provided to Hyperpro in a timely manner. If the information required for the execution of the agreement is not provided to Hyperpro in a timely manner, then Hyperpro has the right to suspend the execution of the agreement, and/or to charge the additional costs incurred by the delay in accordance to the regular rates to the buyer.
6. It is permissible for Hyperpro to deliver the sold goods in part shipments. If goods are delivered in part shipments, then Hyperpro is authorized to invoice each part shipment separately and demand payment in accordance to the current payment terms.
7. It is mandatory for the buyer to accept the sold goods at the moment they are available or delivered to the buyer at hand.
8. If it is not possible to deliver the goods to the buyer due to a cause in the ambiance of the buyer, then Hyperpro reserves the right to store these items at the risk and expense of the buyer. After storage, a period of thirty (30) days will apply within which the buyer will enable Hyperpro to still deliver the goods. All this, unless Hyperpro has expressly stipulated another deadline in writing.
9. If the buyer, upon expiry of the terms referred to in the preceding paragraph of this article, fails to live up to its obligations, then they are legally in default and Hyperpro has the right to completely or partially dissolve the agreement in writing, without previous or further notice, without judicial intervention and without being liable to provide compensation for damage, costs or interest. Hyperpro is entitled to sell the goods to third parties, to use the goods for implementation of other agreements, or discreetly destroy the already made goods. The previous leaves the buyer obligated to pay the agreed stipulated price or owed price, as well as any storage and/or other costs.

10. Hyperpro is always entitled to require, in respect of the fulfillment of the buyer's financial obligations, advance payment or security from the buyer before delivery or to start with the work to be performed.

ARTICLE 6. RESEARCH AND ADVERTISEMENTS

1. The buyer must inspect the received goods immediately upon delivery for possible deviations with what has been agreed on. Any complaints regarding the delivered goods must be submitted to Hyperpro in writing within eight (8) days of delivery together with the included delivery note. After the expiration of the above-mentioned terms, the delivery shall be deemed irrevocably and unconditionally accepted by the buyer. The buyer must keep the faulty products available to Hyperpro. The submission of an appeal does not suspend the buyer's payment obligation in respect of the matters in question.
2. Should the goods be damaged by external appearance upon arrival, then the buyer must make a written acknowledgement to the carrier by means of a comment on the delivery note, in deviation as stipulated in paragraph 1 of this article, and shall report this to Hyperpro within twenty-four (24) hours after receipt of goods.
3. The defective goods can only be returned after Hyperpro has granted written permission.
4. Claims are only valid if the goods delivered have not been processed or altered and are in good condition. If goods have been processed or altered by the buyer, the complaint – regardless on which grounds, including incorrect delivery – is no longer allowed, even if this is reported before the stipulated deadline; in these cases Hyperpro cannot be held liable for compensation of any kind.

ARTICLE 7. PRICE CHANGES

1. If, after the closing of the agreement but before delivery, one or more of the cost factors undergo a change, then Hyperpro is entitled to adjust the agreed price accordingly. Hyperpro is entitled to charge additional costs in any case there are cost-increasing circumstances that Hyperpro realistically did not need to take into account, and which cannot be accounted for by Hyperpro or which are significant in relation to the price of delivery.
2. Furthermore, the buyer will be charged in full, provided that these changes are made after the date of the quote:
 - a. By the Dutch government (including the European government) and/ or trade organizations imposed or changed taxes, duties, fees, wages, terms of employment, social insurance or other charges.
 - b. Changes are made by government or trade organizations to wages, terms of employment, collective agreements, VAT or social security and the like, or if changes are made to the prices of suppliers.
 - c. Price increases due to exchange rates, wages, raw materials, semi-finished products, packaging materials, etc.
3. If Hyperpro finds that cost-increasing circumstances are present, then they must immediately inform the buyer adequately and in writing.
4. If Hyperpro increases the price by more than 10% of the original invoice amount within three (3) months after the agreement has been made, the buyer is entitled to terminate the agreement with Hyperpro free of charge, unless Hyperpro indicates that the agreement will still be fulfilled at the original price. If the buyer wishes to terminate the agreement with Hyperpro in case of a price increase, the buyer must notify Hyperpro within fourteen (14) days after the notification of the price increase of his intention to terminate the agreement by means of a registered letter.

ARTICLE 8. INVOICING AND PAYMENT

1. Hyperpro is entitled to request an advance before the execution of the buyer's agreement, and this advance will be deducted from the last invoice. Advances must be paid without delay.
2. Unless explicitly agreed otherwise, payment of invoices must be made within thirty (30) days after the invoice date, in a manner specified by Hyperpro in the currency in which it is invoiced.
3. After the expiry of the agreed payment period, the buyer is legally in default without the requirement for further notice.
4. The buyer is liable to pay interest at the rate of 1% per month from the moment of payment failure, unless the legal interest rate is higher, in which case the legal interest rate prevails. All (extra) judicial costs –both

inside and out of court - which Hyperpro pays to obtain payment, are the responsibility of the buyer from that moment on. If this is the case, the buyer owes a compensation of at least 15% of the outstanding amount, a minimum of €75,00 (seventy five euros). If the actual costs incurred by Hyperpro exceeds this amount, they will also be compensated.

5. If the buyer did not meet its payment obligations in time, Hyperpro is authorized to suspend compliance with the obligations imposed on the buyer before delivery or before the work is finished until payment has been made or sound security has been provided. The same counts before the moment of default, if Hyperpro has reasonable suspicion that there are reasons for doubting the buyer's creditworthiness.
6. In case of liquidation, bankruptcy, debt settlement or suspension of payment by the buyer, or an application for this, claims of Hyperpro and the obligations of the buyer to Hyperpro are immediately due.
7. Payments made by the buyer are always used firstly for all the interest and costs due, and secondly for demandable invoices which are due the longest, even though the buyer states that the payment relates to a later invoice.
8. If several (legal) entities or companies are designated by the buyer, they will be primarily held responsible to fulfill all the obligations of the concluded agreement with Hyperpro.
9. If the buyer for any reason whatsoever, has one or more counter-claims on Hyperpro, the buyer waives the right of settlement. The mentioned waived right of settlement is also valid if the buyer requests (temporary) suspension of payment or is declared bankrupt.

ARTICLE 9. RETENTION OF OWNERSHIP

1. All delivered and to be delivered goods by Hyperpro remain in possession of Hyperpro until the buyer has completely fulfilled all his obligations to Hyperpro under any agreement concluded with Hyperpro for the delivery of goods, and performing of work or services, including the claim for failure to comply with such an agreement.
2. A buyer acting as a reseller, may sell and deliver all items subject to the retention of ownership of Hyperpro insofar as it is customary in the normal course of business. Hyperpro obtains a tacit right to all claims received by the buyer towards its customers in the resale of items delivered under the retention of ownership of Hyperpro in a manner that is described in art. 3:229 BW.
3. If the buyer opens a new business (partly) of goods delivered by Hyperpro, the buyer constitutes the business only for Hyperpro and the buyer keeps the newly formed business for Hyperpro until the buyer has fulfilled all amounts owing under the agreement; In that case, Hyperpro will have all rights as owner of the newly formed business until the moment of complete payment by the buyer.
4. The buyer is not allowed to acquire limited rights on matters that are subject to the retention of ownership of Hyperpro. If third parties (wish to) settle (limited) rights on matters subject to the retention of ownership, the buyer will notify Hyperpro immediately.
5. On the to be delivered goods that transferred ownership to the buyer by payment but are still in the hands of Hyperpro, Hyperpro reserves the right to property-free pledge as security for claims, other than mentioned in article 3:92 paragraph 2 BW, which Hyperpro should also still have towards the buyer.
6. The buyer is required to keep the under retention of title delivered goods separate from other items, with due care and as recognizable property of Hyperpro.
7. The buyer is required to insure the goods for the duration of the retention of title against fire, explosion and water damage as well as theft, and to give the insurance policies to Hyperpro at first request. All claims by the buyer on insurers of the goods under the aforementioned insurance will, if Hyperpro wishes, be pledged to Hyperpro by the buyer, to assure Hyperpro additional security for claims by the buyer.
8. If the buyer fails to fulfil his obligations or if there is reasonable fear that he will not fulfil them, then legally delivered goods by Hyperpro under retention of title, will be confiscated from the buyer or third parties keeping the goods for the buyer. It is mandatory for the buyer to cooperate, as a penalty of 10% per day on the amount owed will be applied.

ARTICLE 10. SUSPENSION AND TERMINATION

1. If the buyer fails to fulfill his agreement obligations, then Hyperpro, undiminished by what has been stipulated in the agreement, is entitled to terminate the agreement out of court by means of a registered letter. The termination will only take place after the buyer has been notified in writing and a reasonable term has been provided to correct the shortcomings.

2. Furthermore, Hyperpro is entitled, without requiring any notice or notice of default, to terminate the agreement in full or in part by means of a registered letter out of court and with immediate effect if:
 - a. The buyer requests (temporary) suspension of payment or if (temporary) suspension of payment has been granted to the buyer;
 - b. The buyer requests a state of bankruptcy, or is declared bankrupt;
 - c. The buyer applies for legal debt repayment or debt relief or when the Law of Debt Settlement Natural Persons applies to the buyer;
 - d. The buyers' business is liquidated;
 - e. An important part of the buyers' business is taken over.
 - f. The buyer terminates his current business.
 - g. Outside of Hyperpro's control a significant part of the buyers' assets have been seized, or the buyer is no longer able to fulfill the obligations of the agreement.
3. The buyer has the sole authority to suspend or terminate the agreement with Hyperpro insofar as this authority derives from the law. If the buyer has already received part execution of the agreement at the time of termination, then he can only partly terminate the agreement for that part which has not yet been executed by or on behalf of Hyperpro.
4. Amounts that Hyperpro has invoiced to the buyer before the termination of the agreement in connection with what he has already executed of the agreement, remain unchanged and owed by the buyer to Hyperpro and becomes immediately due at the time of termination.
5. If the buyer has a notice of default and does not meet the obligations, not meet the obligations completely or not meet the obligations arising out of the agreement in a timely matter, then Hyperpro is entitled to suspend his obligations to the buyer, without being liable to pay any compensation to the buyer. To this end, Hyperpro is also entitled under the circumstances referred to in paragraph 2 of this article.

ARTICLE 11. WARRANTIES

1. Drawings, technical descriptions, steel material, samples, images, colours, sizes and material specifications are given by Hyperpro in good faith and as accurately as possible. However, this informative data is not binding. Deviations in delivered goods with the in-branch normal margins must be accepted and do not give the buyer any right to advertising, replacement, compensation for damage or any other right, unless the agreement specifically mentions a smaller margin for deviations.
2. If the goods to be delivered do not comply with the issued warranties, then Hyperpro will provide within a reasonable period after receipt thereof, or if return is not possible, a written notice regarding the defect to the buyer, and at Hyperpro's choice, will provide a replacement or take care of the restoration. In case of replacement, the buyer is committed to return the goods to be replaced to Hyperpro which then transfers the ownership back to Hyperpro.

ARTICLE 12. EXPIRATION OF WARRANTY

1. If the buyer does not fulfill his payment obligations in time or if during the warranty period any repairs, adapting or processing were done to the delivered goods without a prior written consent from Hyperpro, then it immediately voids any warranty obligations. The buyer cannot refuse payment on grounds that a warranty obligation has not, not yet, or not been fully met by Hyperpro.
2. The warranty issued by Hyperpro does not apply if a defect is due to improper use, negligence, incorrect processing or adapting of the delivered goods, attempts at repair without permission from Hyperpro, unauthorized changes or use of the goods, or when the defect is a consequence of the abuse of goods, a fire, or another external cause. Furthermore, the following circumstances are also not covered by warranty: damage as a result of normal wear and tear and usage damage such as scratches, bumps, dents or a worn top layer, water damage, damage due to the use of (aggressive) maintenance or cleaning agents, or by exposing the item to (too) high temperatures.

ARTICLE 13. LIABILITY

1. If Hyperpro is liable for damage, then this liability is limited to compensation for direct damage and only up to the invoice value of the agreement to which the liability relates. Direct damage is exclusively understood as:
 - a. The reasonable costs for determining the cause and extent of the damage, insofar as the determination relates to the damage within the terms of these general terms and conditions.
 - b. Any reasonable costs incurred to have the defective performance of Hyperpro comply with the agreement, unless these cannot be ascribed to Hyperpro.
 - c. Reasonable costs incurred to prevent or limit damage, to the extent that the buyer can show that these costs have led to limitation of the direct damage as referred to in these general terms and conditions.
2. Hyperpro is never liable for indirect damage, including personal injury, consequential loss, lost profit, missed savings, damage due to business stagnation and damage resulting from fines imposed due to failing to meet delivery deadlines.
3. Hyperpro is not liable for damage of any kind or in any form whatsoever due to inaccurate and/or incomplete information supplied by the buyer.
4. The limitations of liability for direct damage included in these general terms and conditions do not apply if the damage is due to intent or gross negligence of Hyperpro.

ARTICLE 14. FORCE MAJEURE

1. The parties are not obliged to comply with any obligation, if they are prevented from doing so as a result of circumstances that are beyond their control, not under the law, a legal act or generally accepted in the trade.
2. Force majeure is understood in these general terms and conditions in addition to what is understood in the law and jurisprudence as all external causes, foreseen or unforeseen, on which Hyperpro cannot exert any influence, but as a result of which Hyperpro is unable to meet his obligations. Strikes in the company of Hyperpro or the involved manufacturer or supplier are also included.
3. Hyperpro also has the right to invoke force majeure, if the circumstances that prevent (further) performance occur after Hyperpro should have fulfilled its obligation.
4. Parties may suspend the obligations under the agreement during the period that the force majeure continues. If this period lasts longer than 30 days, each party is entitled to dissolve the agreement, without obligation to compensate the other party for damage.
5. For as much as Hyperpro is partially able to fulfill its obligations under the agreement or will be able to fulfill them at the occurrence of force majeure, and if the part to be fulfilled or to be paid is independent value, Hyperpro is entitled to invoice the part already fulfilled or to be fulfilled. The buyer is obliged to pay this invoice as if it were a separate agreement.

ARTICLE 15. INDEMNITY

The buyer indemnifies Hyperpro for any claims by third parties, who suffer damage in connection with the execution of the agreement and whose cause is attributable to someone other than Hyperpro, including claims by third parties relating to intellectual property rights on materials or data provided by the buyer, used in the implementation of the agreement. If Hyperpro should be addressed by third parties for that reason, then the buyer is obliged to assist Hyperpro both in and outside court and do everything that may be expected of him in that case without delay. If the buyer remains in default with regard to taking adequate measures, then Hyperpro is entitled, without notice of default, to proceed in this himself. All costs and damage on the side of Hyperpro and third parties that thereby arise, are fully at the expense and risk of the buyer.

ARTICLE 16. APPLICABLE LAW AND JURISDICTION

1. The Dutch law applies to all agreements made and to be made by Hyperpro.
2. All disputes that may arise in connection with the present agreement or other agreements which may be the result thereof, will be settled in accordance with the Arbitration Regulations of the Dutch Arbitration Institute with due observations of the following requirements:
 - a. The court of arbitration will consist of three arbitrators;

- b. The place of arbitration is Rotterdam;
- c. The procedure will be followed in the Dutch language;
- d. The court of arbitration decides on the rules of the law;
- e. Merging the arbitral proceedings with another arbitral dispute as provided for in article 1046 Rv. is excluded.

ARTICLE 17. CHANGE, EXPLANATION AND LOCATION OF THE TERMS AND CONDITIONS

1. These terms and conditions have been filed at the office of the Chamber of Commerce in Rotterdam.
2. In case of explanation of the content and scope of the general terms and conditions, and in case of conflict between the content or explanation of any translations of these general terms and conditions and the Dutch version, the Dutch text always prevails.
3. The last filed version or the version that applied at the time of the conclusion of the agreement always applies.

This document is a translation. Should a dispute arise, the Dutch version of these General Terms and Conditions of Delivery prevails.