

General Terms and Conditions Of VDZ Hefsystemen B.V. and affiliated companies



VDZ Hefsystemen B.V.
Morsestraat 28 4004 JP Tiel NL

Article 1. General

1.1 The user of these General Terms and Conditions (hereinafter: "the General Terms and Conditions") is VDZ Hefsystemen B.V., with its registered office and principal place of business at (NL-4004 JP Tiel), at the address Morsestraat 28, registered in the Trade Register under number 75344130, and the group of partnerships and/or companies directly and/or indirectly related thereto. Hereinafter referred to as: "VDZ Hefsystemen".

1.2 The General Terms and Conditions apply to the conclusion, content and execution of all quotations, offers, agreements and legal relationships between VDZ Hefsystemen and the Customer in connection with deliveries of Goods or Services to be made by or on behalf of VDZ Hefsystemen.

1.3 The General Terms and Conditions also apply to agreements with VDZ Hefsystemen, in the event that VDZ Hefsystemen involves any third parties in executing such agreements.

1.4 Any deviations from the General Terms and Conditions or any supplements thereto are only valid in so far as these have been expressly confirmed to the Customer in writing, by an official of VDZ Hefsystemen who is authorised thereto.

1.5 The General Terms and Conditions of the Customer are not applicable.

1.6 By concluding an agreement with VDZ Hefsystemen, the Customer waves any General Terms and Conditions that may be used by them, in order to ensure that the General Terms and Conditions of VDZ Hefsystemen are the only terms and conditions that are applicable.

1.7 In the event that the General Terms and Conditions contain stipulations that deviate from the Agreement, the Agreement takes precedence.

1.8 In the event that one or more of the provisions contained in the General Terms and Conditions would not be legally valid, this leaves the validity of the other provisions unchanged. In such case the parties will

replace the void provision in good mutual consultation, in such a way that the new provision follows the meaning of the not legally valid provision as much as possible.

Article 2. Definitions

In these Terms and Conditions, the following definitions have the following meaning:

2.1 Offer: every offer by VDZ Hefsystemen to the Customer to conclude or amend an agreement.

2.2 Recovery equipment: the equipment produced by VDZ Hefsystemen, as specified on the Order Confirmation.

2.3 Order Form: the Order Form used by VDZ Hefsystemen which specifies the Customer's order for Goods and/ or Services.

2.4 Services: work for the Customer agreed by VDZ Hefsystemen in the Agreement.

2.5 Goods: products of which it is agreed in the Agreement that these are purchased by the Customer from VDZ Hefsystemen.

2.6 Customer: the natural person or legal person with whom VDZ Hefsystemen concludes an agreement, or who requests a quotation before concluding an agreement or completes the Order Form.

2.7 Agreement: the Agreement concluded between VDZ Hefsystemen and the Customer for the sale and delivery of Goods and/or Services.

2.8 Order confirmation: the written confirmation of the Agreement provided by VDZ Hefsystemen to the Customer in which the Goods and/or Services purchased by the Customer from VDZ Hefsystemen are specified.

Article 3. Offer

3.1 Every offer from VDZ Hefsystemen to the Customer is free of any obligation and can at any time be revoked, also in the event that the Offer specifies a term for the acceptance.

3.2 Quotations or other offers from representatives or other employees of VDZ Hefsystemen and quotations or other offers from auxiliary staff called in by VDZ Hefsystemen only bind VDZ Hefsystemen in the event and in so far as these have been confirmed by VDZ Hefsystemen by means of the Order Confirmation.

3.3 Descriptions, illustrations, models and/or samples used to inform the Customer about the Goods and Services offered only provide a general impression of the relevant items.

3.4 The information referred to in Article 3.3 (including advertisements and pricelists) does not form part of the Agreement between VDZ Hefsystemen and the Customer, so that the Customer cannot derive any rights therefrom.

3.5 In the event that the Customer acts within the framework of the execution of an occupation or a company, Articles 6:227b paragraph 1 and 6:227c of the Civil Code are not applicable.

Article 4. Formation of the Agreement

4.1 Every order, completed order form or acceptance of a quotation sent to the Customer by VDZ Hefsystemen for the provision of Goods and/or Services is deemed to be an acceptance by the Customer pertaining to the purchase of Goods and/or Services from VDZ Hefsystemen.

4.2 The Agreement is concluded at the time of confirmation by VDZ Hefsystemen of the conclusion and the content of the Agreement in writing, by sending the Order Confirmation to the Customer.

4.3 In the event that, for any reason, the procedure as hereinbefore written is deviated from, for example because communication was verbally only, the Order Confirmation is deemed to reflect the content of the Agreement correctly, unless the Customer immediately informs VDZ Hefsystemen of any objections against such statement.

4.4 In the event that there is no order confirmation as referred to in Articles 4.2 and 4.3, the invoice sent by VDZ Hefsystemen is considered the Order Confirmation.

Article 5. Price

5.1 Unless agreed otherwise in writing, all quotations submitted by VDZ Hefsystemen are free of any obligation and valid until three months following the date of the quotation. The price of Goods and Services is specified on the Order Form and on the quotation.

5.2 Unless agreed otherwise in writing by VDZ Hefsystemen BV, the prices offered and agreed for the Goods and/or Services are exclusive of value added tax and/or any government levies in the broadest sense of the word.

5.3 The prices offered and agreed are ex warehouse in Buren.

5.4 The prices offered and agreed are not inclusive of :

- a. the costs of loading and unloading;
- b. transport costs;
- c. insurance costs;
- d. test and inspection costs;
- e. packaging costs.

5.5 With regard to all pricelists and offers VDZ Hefsystemen reserves the right to change the prices mentioned on these lists without previous notification to the Customer.

Article 6. Delivery

6.1 Delivery of the Goods will take place at the location confirmed by VDZ Hefsystemen. Unless agreed otherwise, delivery takes place ex-factory of VDZ Hefsystemen.

6.2 Delivery will take place after the Customer has returned the signed order confirmation to VDZ Hefsystemen.

6.3 The Customer itself must, for its own account, arrange any required permits, concessions, licenses, authorisations, et cetera.

6.4 VDZ Hefsystemen has the right to store or have stored for the account and risk of the Customer any Goods that are ready to deliver but cannot be transported to their destination due to reasons outside its control or in the event that VDZ Hefsystemen is unable to deliver the Goods in time because the Customer has not provided correct instructions, documents, permits or authorisations, and to request payment as if delivery has taken place.

6.5 In the event that the situation as referred to in the previous paragraph arises, the risks in relation to the Goods, including without being limited to any loss or damage caused by negligence on the part of VDZ Hefsystemen, will pass to the Customer. The Customer is liable for any costs and expenses pertaining thereto, including without being limited to any costs of storage and insurance.

6.6 VDZ Hefsystemen is not liable for any shortages, shortcomings or damages with regard to the Goods, including when this is caused by any negligence on the part of VDZ Hefsystemen, unless the Customer has informed VDZ Hefsystemen in writing and directly within five days following delivery of the fact that the Goods are damaged and under submission of a clear description of the defects, including clear images

thereof.

6.7 VDZ Hefsystemen BV is entitled to refuse delivery of the Goods to, and/ or provision of the Services at, the Customer's premises if VDZ Hefsystemen BV, in its sole opinion, believes that it would be unsafe, unlawful or unreasonably difficult, or if the Customer's premises (or access thereto) is unsuitable for VDZ Hefsystemen BV's vehicles.

Article 7. Delivery times

7.1 All delivery times specified by VDZ Hefsystemen always have an indicative scope.

7.2 VDZ Hefsystemen is not liable for any direct, indirect or consequential damages (including, without being limited to, loss of profits, loss of proceeds, data, goodwill or expected savings), costs, charges or expenses directly or indirectly caused by a delay in the delivery of Goods or Services by VDZ Hefsystemen. This also applies in the event that such delay in delivery is attributable to VDZ Hefsystemen.

7.3 Any delay in delivery will not entitle the Customer to termination or revocation of the Agreement, unless such delay in delivery exceeds 180 days.

7.4 In the event that the intended delivery time is exceeded by VDZ Hefsystemen by more than 180 days, this will not lead to VDZ Hefsystemen being in default. This always requires a further notice of default by the Customer in which VDZ Hefsystemen is offered a reasonable term to meet its obligations.

Article 8. Payment

8.1 Payment must take place within 10 days of the invoice date, unless specified otherwise by VDZ Hefsystemen. In this context, the Customer does not have the right to rely on settlement or suspension.

8.2 In the event that the Customer has not paid within the term mentioned in Article 8.1, the Customer is in default by operation of law and VDZ Hefsystemen has, without any prior notice of default being required, the right to charge the legal commercial interest rates as provided for in Article 6:119a of the Civil Code as from the due date of the invoice.

8.3 All costs for the account of VDZ Hefsystemen B.V. that are attached to the collection of the amount payable by the Customer to VDZ Hefsystemen are for the account of the Customer. The extrajudicial costs (also including reasonable compensation for the time spent on the collection by VDZ Hefsystemen) are set at 15% of the main amount payable, with a minimum of € 500.00.

8.4 On first request, the Customer provides security (whether or not supplementary) for payment to VDZ Hefsystemen.

8.5 Before commencement of the work and in between, VDZ Hefsystemen has the right to suspend performance of the work until the moment the Customer has made a prepayment determined in reasonableness for the work to be performed or has provided surety therefor.

Article 9. Transfer of risk and retention of title

9.1 The Customer bears the risk of the Goods as from the moment these have left the warehouse of VDZ Hefsystemen.

9.2 Loading and unloading and transport of the Goods takes place for the risk of the Customer.

9.3 All Goods delivered by VDZ Hefsystemen remain the property of VDZ Hefsystemen until the Customer has fully complied with all its payment obligations towards VDZ Hefsystemen arising from any agreement concluded with VDZ Hefsystemen for the delivery of Goods or the performance of work or Services, including any claims pertaining to failure to adhere to such agreement.

9.4 The Customer is under the obligation to store the Goods delivered by VDZ Hefsystemen for its own account, separated from the other Goods under its possession, in such a way that the Goods delivered by VDZ Hefsystemen can be identified immediately as owned by VDZ Hefsystemen. The Customer is not allowed to destroy, remove or make illegible any identification marks or packagings of the Goods. The Customer must keep the Goods in sufficient condition and also keep them insured for VDZ Hefsystemen for the full amount, against all risks, to the satisfaction of VDZ Hefsystemen. The Customer will show the insurance policy to VDZ Hefsystemen BV upon request.

9.5 The Customer does not have the right to establish a pledge on the unpaid Goods or any other right in rem or personal right thereon for the benefit of any third party.

9.6 Without prejudice to the provisions hereinbefore stipulated in this article, the Customer is allowed to sell the Goods to any third party under retention of title, but only within the framework of its normal business operations. In such case the Customer must pay the money obtained to VDZ Hefsystemen immediately or, in the event that the Goods have not been transferred against payment, transfer the claims it has against VDZ on first request.

9.7 The Customer grants to VDZ Hefsystemen the unconditional right of access to the premises where the Goods will or can be stored in order to inspect the Goods or, in the event that the Customer does not pay, recover the Goods.

Article 10. Intellectual property rights

10.1 VDZ Hefsystemen is the owner of and exclusive entitled party to its name, logo, working method, parts, specifications, drawings, patterns, plans, blueprints, descriptions, designs, formulations, knowhow, technical information, advice, regulations, reports, et cetera.

10.2 The Customer is not allowed to use any subjects of intellectual property as referred to in article 10.1, except with VDZ Hefsystemen's prior written permission.

10.3 The Goods and documents prepared by VDZ Hefsystemen must not be copied or shown or disclosed to any third party, except with VDZ Hefsystemen's prior written permission.

10.4 The Customer indemnifies VDZ Hefsystemen against any claims from third parties under any intellectual property right or similar rights pertaining to the delivery of Goods produced by VDZ Hefsystemen on the Customer's request and/or as directed by the Customer.

10.5 Parts, specifications, drawings, patterns, plans, blueprints, descriptions, designs, formulations, knowhow, technical information, advice, regulations, reports, et cetera remain the property of VDZ Hefsystemen, also in the event that the Customer has been charged for the production thereof.

Article 11. Privacy, data processing and security

11.1 In the event that VDZ Hefsystemen considers this important for the execution of the Agreement, the Customer will inform VDZ Hefsystemen in writing, immediately on request, of the way in which the Customer performs its legal obligation in the field of the protection of personal data.

11.2 The Customer indemnifies VDZ Hefsystemen against any claims from persons whose personal data have been processed or will be processed within the framework of processing carried out by the Customer or for which the Customer is responsible under the law or otherwise unless the Customer proves that the facts the claims are based on must be attributed to VDZ Hefsystemen only.

11.3 The Customer is solely responsible for the data process using a service provided by VDZ Hefsystemen. The Customer guarantees towards VDZ Hefsystemen that the content, the use and/or the processing of the data are not unlawful and do not violate any right of any third party. The Customer indemnifies VDZ Hefsystemen against any legal claim made by any third party, for any reason whatsoever, in connection with these data or the performance of the Agreement.

11.4 In the event that VDZ Hefsystemen is under the obligation in accordance with the Agreement to provide information security, such security will meet the specifications with regard to security as agreed between the parties in writing. VDZ Hefsystemen does not guarantee that the information security is

efficient under any circumstances. In the event that the Agreement does not include any expressly described security, such security will comply with the level that, considering the state-of-the-art, the sensitivity of the data and the costs attached to organising the security is not unreasonable.

11.5 In the event that during the performance of the Agreement or otherwise computer, data, or telecommunications facilities are used, VDZ Hefsystemen has the right to assign access or identification codes to the Customer. VDZ Hefsystemen has the right to change attributed access or identification codes. The Customer keeps the access and identification codes confidential and handles these codes with care and makes them available to authorised employees only. VDZ Hefsystemen is not liable for any damage or costs resulting from the use or misuse of access or identification codes, unless such misuse was possible as a direct consequence of an attributable shortcoming or neglect on the part of VDZ Hefsystemen.

Article 12. Complaint

12.1 The Customer is under the obligation to check the number and type of Goods as well as the packaging for shortcomings and/or defects immediately upon receipt of the Goods delivered.

12.2 Any complaints about numbers, types and packaging of Goods delivered must be specified by the Customer on the transport document or the delivery note immediately.

12.3 Any visible defects to the Goods delivered and/or to the packaging must be reported by the Customer to VDZ Hefsystemen as soon as possible but at least within 24 hours. The notification must include a description that is as detailed as possible, to enable VDZ Hefsystemen to respond to such notification.

12.4 Introducing the Goods into service and/or reselling them is considered acceptance by the Customer.

12.5 The Customer is under the obligation to report any hidden defects within 5 working days after they have been identified or should in reasonableness have been identified to VDZ Hefsystemen in writing, but no later than two months following receipt of the Goods.

12.6 In the event of a complaint as referred to in this article, the Customer is under the obligation to keep the Goods it has lodged a complaint about available for VDZ Hefsystemen for further investigation. For that matter as well the Customer is under the obligation to cooperate with any investigation of Goods and if necessary allow VDZ Hefsystemen access to the buildings where the Goods are stored. In the event that the Customer does not adhere to this obligation, every right on the part of the Customer to a complaint and/or replacement of the Goods will cease to exist.

12.7 In the event that the complaint lodged by VDZ Hefsystemen is considered founded, VDZ Hefsystemen will only be under the obligation to repair or replace the defective (parts of the) Goods free of

charge, unless this cannot in reasonableness be asked of VDZ Hefsystemen and without the Customer being entitled to any compensation whatsoever. All Goods replaced will become the property of VDZ Hefsystemen.

12.8 Returning Goods is only allowed following prior written consent from VDZ Hefsystemen, whereby VDZ Hefsystemen has the right to set conditions with regard to, among other things, the costs and the method of returning.

12.9 In the event that Goods are returned without the permission provided for in Article 12.8, the dispatch and storage of the Goods are for the account and risk of the Customer.

12.10 A complaint as referred to in this Article does not entitle the Customer to defer its (payment) obligations towards VDZ Hefsystemen and/or rely on set off. The Customer also continues to be obliged to purchase and pay the other Goods ordered.

12.11 If there is no timely notification as referred to in this article, the Customer's right to rely on a shortcoming will no longer be valid.

Article 13. Guarantee

13.1 VDZ Hefsystemen guarantees the sound condition of the Goods delivered by them, on the understanding that the content of the Agreement determines the assessment of the type, the quality and the dimensions of the Goods delivered and the way of execution.

13.2 The guarantee referred to under 13.1 is applicable for a period of 12 months, as from the date of delivery, and only implies that VDZ Hefsystemen is under the obligation to deliver any missing Goods afterwards, replace and/or repair Goods delivered or take back the Goods delivered, all of this to be determined by VDZ Hefsystemen.

13.3 After a test performed by VDZ Hefsystemen, the guarantee referred to under 13.1 can be extended with a period of 12 months, all of this at the discretion of VDZ Hefsystemen.

13.4 The guarantee referred to in this Article does not apply in the event that:

- a. the Customer has not complied with the obligations as referred to in Article 12 (Complaint);
- b. the defect is the result of a shortcoming on the part of the Customer with regard to adhering to verbal or written instructions, including instruction manuals and instruction videos, provided by VDZ Hefsystemen with regard to the storage, installation, testing, use or maintenance of the Goods delivered;

- c. the Customer overloads the Goods (reference is made to the CE rating plate delivered with the Goods, showing the lift diagrams) or uses them incorrectly in any way;
- d. the Customer performs any changes or repairs to the Goods delivered without VDZ Hefsystemen's permission;
- e. the defect is a result of an error in a design, drawing, specification or instruction provided by the Customer.

13.5 In the event that it becomes apparent that the Customer has wrongly claimed guarantee, all investigation and additional costs are for the account of the Customer.

Article 14. Force Majeure

14.1 In the event that VDZ Hefsystemen fails to adhere to the Agreement, fails to adhere to the Agreement in time or fails to adhere to the Agreement properly as a result of a cause that cannot be attributed to them, including without being limited to any stagnation in the regular state of affairs within the Customer's company, the obligation to adhere to the Agreement is suspended until the moment at which VDZ Hefsystemen is able to adhere to the Agreement after all, without the Customer being entitled to claim adherence and/or damages. Force majeure is understood to be, among other things, a delay in the delivery by the suppliers of VDZ Hefsystemen, as a result of which the last mentioned is unable to meet its delivery obligations towards the Customer (in time).

14.2 In the event that the situation as mentioned in Article 14.1 takes longer than one month, VDZ Hefsystemen has the right to dissolve the Agreement without the Customer in such case having any entitlement to payment of damages.

14.3 In the situation as referred to in 14.2, the Customer does not have the right to dissolve the Agreement, unless the Customer is able to demonstrate that performance is of essential importance for their business operations. This solution must in such case take place in writing and no later than five days following the end of the term of one month.

14.4 In the event that, upon commencement of the force majeure VDZ Hefsystemen has already partly adhered to their obligations, or is able to fulfil their obligations in part only, VDZ Hefsystemen is entitled to invoice the Goods already delivered or the deliverable part of the Goods separately and the Customer is under any obligation to pay this invoice as if there was a separate agreement.

15. Liability on the part of VDZ Hefsystemen

15.1 In the event that VDZ Hefsystemen, with due observance of the provisions contained in the law, in the Agreement and in these present General Terms and Conditions is indeed liable towards the Customer, such liability is limited to the invoice value of the Goods and/or Services delivered that have caused the

damages, with a maximum of € 15,000.00. If and insofar as VDZ Hefsystemen is liable for the damage and the damage falls under the cover of the business liability insurance taken out by VDZ Hefsystemen, the compensation will in any case not exceed the amount that is actually paid by the insurer to VDZ Hefsystemen with regard to the relevant case.

15.2 VDZ Hefsystemen is not liable for any direct and/or indirect damages, including personal and property damage, immaterial damage, consequential damage (damage as a result of business stagnation, lost income and production loss) and any other damage due to any cause whatsoever unless in the event of gross negligence or intent on the part of VDZ Hefsystemen.

15.3 VDZ Hefsystemen is in no event liable for any damage in the event that the Customer has not used the Goods in accordance with the instruction manual and the instruction videos provided by VDZ Hefsystemen. VDZ Hefsystemen is not liable either for any damages occurring in the event that the Customer overloads the Goods (reference is made to the CE rating plate delivered with the Goods, showing the lift diagrams) and/or uses them incorrectly in any way.

15.4 VDZ Hefsystemen is not liable either in the sense as mentioned above for any acts on the part of its employees or other persons falling within its control, including (gross) negligence or intent on the part of such persons.

15.5 The Customer indemnifies VDZ Hefsystemen and its employees and the auxiliary staff called in for the performance of the Agreement against any claims by third parties, including the Customer's customers, against any claims based on product liability, including in connection with the performance of the Agreement by VDZ Hefsystemen, irrespective of the cause, as well as against any costs resulting therefrom for VDZ Hefsystemen.

16. Inspection of defects

In the event that the Customer relies on a visible or alleged defect with regard to the Goods or holds VDZ Hefsystemen liable for such defect, the Customer is under the obligation to make such Goods available to VDZ Hefsystemen for further inspection on first request. VDZ Hefsystemen is authorised to call in an independent expert institute to have such Goods inspected for its account. The Customer is under the obligation to cooperate with any inspection of the Goods and allow VDZ Hefsystemen and/or the independent institute called in by them access to the buildings where these Goods are located if necessary. In the event that the Customer fails to fulfil its obligations, any entitlement of the Customer to payment of damages, repair and/or replacement by VDZ Hefsystemen becomes ineffective.

VDZ Hefsystemen does not accept any liability and/or any reliance on the warranty in the event that the Customer itself has had the Goods inspected.

17. Limitation of action clause

17.1 Without prejudice to the provisions contained in Article 6:89 Civil Code and without prejudice to the provisions contained in these General Terms and Conditions, any claims made by the Customer under the Agreement will become void in the event that the facts such claim is based on were not known to the Customer or should in reasonableness have been known to the Customer has not been submitted to the competent court within one year.

18. Termination of the Agreement

18.1 VDZ Hefsystemen is entitled to suspend the Agreement or terminate the Agreement without any prior notice of default in the event that the Customer:

- a. fails to fulfil its obligations under the Agreement;
- b. applies for a (provisional) suspension of payment;
- c. is declared bankrupt;
- d. (in the event of a natural person) is granted statutory debt adjustment under the Debt Restructuring (Natural Persons) Act;
- e. winds up its company or transfers its company to any third party in part or in whole;
- f. loses the control of its capital in part or in whole, as a result of, among other measures, an attachment.

18.2 In the event of termination of the Agreement, the Customer will, at the request of VDZ Hefsystemen, pay a compensation for any stock (final product or intermediate product) VDZ Hefsystemen has in its position or for Goods ordered by the Customer with VDZ Hefsystemen.

19. Information provision

19.1 The Customer is under the obligation to make available all information and documents required for a good performance of the Agreement (all of this at the discretion of VDZ Hefsystemen) to VDZ Hefsystemen in time, in the form and manner stated by VDZ Hefsystemen to the Customer.

19.2 VDZ Hefsystemen has the right to suspend the performance of the Agreement until the Customer has complied with the obligations referred to in Article 19.1.

19.3 The Customer is responsible for the correctness and completeness of the information and documents made available by it to VDZ Hefsystemen.

19.4 The Customer indemnifies VDZ Hefsystemen against any claims made by third parties that result from an incorrect or incomplete information provision as referred to in this Article.

Article 20. Concluding provisions, applicable law and choice of forum

20.1 The Agreement will include all arrangements made between the parties and will take precedence over any earlier written or verbal agreement between them.

20.2 Dutch law is applicable to all agreements between VDZ Hefsystemen and the Customer, with the exception of the Vienna Convention on Contracts for the International Sale of Goods 1980.

20.3 Any dispute arising from the agreements concluded between VDZ Hefsystemen and the Customer will be submitted to the competent court in Gelderland.