

General terms and conditions of Trioworld Apeldoorn B.V.

General

The general terms and conditions of Trioworld Apeldoorn B.V., with registered office in Apeldoorn, referred to below as 'TWA'. These general terms and conditions were filed with the Netherlands Chamber of Commerce on 08-04-2021 under no. 08038695.

1. Application

- 1.1. These general terms and conditions (the 'general conditions') apply to and form an inseparable whole with all offers and quotations of TWA, all acceptances by TWA, all contracts with TWA as well as all legal acts (whether or not in electronic form) that relate to the activities of TWA.
- 1.2. Agreements or stipulations that deviate from these general conditions are only binding if TWA has explicitly confirmed and accepted these in writing and then only for the agreement for which the deviation in question was made and intended. For the rest, these general conditions remain in force.
- 1.3. Once a customer of TWA has concluded an agreement with TWA on the basis of these general conditions or if the customer is aware of them in another way or can reasonably be expected to be aware of them, these general conditions will apply to every subsequent agreement with TWA, even if at the time of concluding the agreement in question there was no express reference to these general conditions or a declaration of applicability of these general conditions.
- 1.4. These general conditions have been drawn up in a number of languages. In case of differences in interpretation, the Dutch version is decisive.
- 1.5. TWA explicitly rejects the applicability of other general terms and conditions or stipulations, including the purchase conditions of the customer of TWA.

2. Creation of a contract/offers/quotations

- 2.1. The offers and quotations made by TWA are without obligation and explicitly do not bind TWA, unless a period for acceptance has been clearly stipulated in a written offer or quotation. The applicability of Book 6 Article 219 of the Dutch Civil Code is expressly excluded.
- 2.2. There is no binding contract with a customer until TWA has accepted the customer's order in writing, for example by means of an order confirmation or confirmation by e-mail or by TWA executing the order placed.
- 2.3. When placing an order, a customer must provide TWA with as complete a written statement as possible of the products and product characteristics it requires. If there is a difference between the order intended by the customer and the written confirmation by TWA, the customer is bound by the written confirmation of TWA, unless the customer informs TWA in writing within 5 days after the date of the confirmation that this confirmation by TWA is not in accordance with the order and the customer proves that this was known to TWA.
- 2.4. TWA reserves the right to refuse orders.

3. Delivery

- 3.1. The delivery terms given by TWA to the customer with regard to the goods to be delivered by TWA are only indicative and are not meant as a deadline or expiry date. In this respect, the customer must issue TWA with a notice of default that stipulates a further reasonable term, depending on the situation, within which TWA may still comply with its obligations.
- 3.2. Delivery will in principle take place Ex works in accordance with the Incoterms applicable at the time of the contract, unless explicitly agreed otherwise.

4. Prices

- 4.1. The prices that TWA stipulates to or agrees with the customer are set out in the offer and expressed in euros. These must be increased by the liability to VAT, unless explicitly stated otherwise.
- 4.2. TWA is not obliged to fulfill a contract at a stated price which is based on an apparent printing or typesetting error or which is obviously not in conformity with the market.
- 4.3. TWA is explicitly authorized to unilaterally change the price, conditions and the contents of a contract, without entitling the customer to cancel the contract, if market circumstances (foreseen or unforeseen) or cost-increasing circumstances such, as but not limited to, the costs of raw materials and fuels, materials, manufacturing or transport, give rise to this. In the event of such a change, TWA is not liable to compensate the customer.
- 4.4. Deviations in the contract up to a maximum of 10% of the delivery time will in principle be considered reasonable, unless the customer demonstrates that it cannot reasonably be expected to accept this.

5. Drawings, printing blocks, etc.

- 5.1. All designs, drawings, printing blocks, lithographs, slides, moulds, printing cylinders and other image carriers, manufactured by or on behalf of TWA, whether or not at the request of the customer, and whether or not these have been charged in full or in part to the customer, remain the property of TWA, unless otherwise agreed. They must be returned at the first request of TWA.
- 5.2. If designs, drawings, printing blocks, lithographs, slides, moulds, printing cylinders and other image carriers have not been used for the production of goods for the customer for a period of two years, TWA has the right to remove the printing blocks without liability to compensate the customer.

6. Deviations

- 6.1. The following deviations from the specifications stated in the order confirmation may occur both upwards and downwards. For the purpose of assessing whether these deviations have been exceeded, the average of the total quantity delivered in one type, quality, colour and design shall apply as the criterion.
- 6.2. Quantity

A price per kilogram is based on the total weight of the roll (foil and tube on which the foil is placed), unless otherwise agreed.
The deviations from the agreed quantity are: if sold by weight:

- batches of less than 500 kg 25%
- batches of 501 to 1,000 kg 20%
- batches of 1,001 to 2,500 kg 15%
- batches of 2,501 kg or more 10%

If sold by surface area, length or number of units, the deviations apply according to the above arrangement, whereby area, length, or number of units are based on film weight.

- 6.3. For this purpose, 'batch' means the agreed quantity in one type, quality, colour and execution. If a minimum or maximum quantity has been agreed, double this percentage may be increased or decreased respectively. If a batch is subdivided by the customer into different manufacturing batches, the above percentages shall apply to each of the manufacturing batches. If a batch is delivered by TWA in parts, the above percentages apply to the total batch. If it has been agreed that a consignment is divided over a number of packages with a provision regarding weight, number or length per package, then such provision is entirely without obligation and the above percentages apply to the entire consignment.
- In the event of deviations from the agreed quantity, the customer will be charged for the quantity actually delivered.

- 6.4. Colour
Deviations from the agreed colour are possible except insofar as they could have been prevented by the production methods applied. The shelf life of colours is not guaranteed, regardless of the use of indications such as lightfast and light resistant in correspondence, quotations or order confirmations.

- 6.5. Thickness
The possible deviation from the agreed thickness for plastic film is a difference of + or - 10%.

- 6.6. Sizes
The possible deviations from the agreed width for rolls of plastic film are a difference of + or - 10 mm.

- 6.7. TWA will replace items or, if possible, parts of items that exceed the deviations mentioned in this article, if TWA agrees that the customer is, or will become, disadvantaged by those deviations.

- 6.8. TWA is only obliged to replace if the deviation and the disadvantage have been notified in writing within 3 working days after delivery or, in the case of deviations that can only be discovered during use or processing, within 5 working days after these deviations are discovered or could reasonably have been discovered.

7. Security

- 7.1. If there is reasonable doubt on the part of TWA regarding the payment capacity or the financial soundness of the customer, TWA is entitled to demand advance payment or sufficient (additional) security up to the amount of the customer's payment obligation, and not to make deliveries until this advance payment has been received or this (additional) security has been provided.

- 7.2. The customer is itself responsible for any delay in delivery and any loss suffered as a result.

- 7.3. If the customer has not made prior payment or provided security within 14 days after TWA's request, TWA is entitled to terminate part or the entire contract with immediate effect without being obliged to pay any compensation.

8. Payment terms

- 8.1. The term of payment applied by TWA is 30 days after the invoice date, to be received on the account of TWA, unless otherwise agreed in writing.

- 8.2. All payments must be made without any deduction or set-off in the manner to be determined by TWA. The right of the customer to postpone or to settle is explicitly excluded by TWA.

- 8.3. TWA has the right to suspend the performance of any contract, until full payment of outstanding invoices and other claims has been received by TWA.
- 8.4. TWA reserves the right, having regard inter alia to the provisions of Article 7, even after partial delivery of goods and/or services, to demand financial guarantees and securities from the customer.

- 8.5. TWA is also entitled to invoice after partial delivery.

- 8.6. The prices charged and all invoices sent are, without any summons or notice of default being required, at all times immediately due and payable in the event that the customer is declared bankrupt, applies for or obtains a provisional moratorium, applies for and is granted by the court (if a natural person) a statutory debt rescheduling arrangement, loses the power to dispose of any part of their assets by attachment, receivership or otherwise, or otherwise fails to comply with any of their obligations, regardless of whether these arise from this contract, any other agreement, or under law.

- 8.7. The customer shall be in default by operation of law by the mere expiry of the agreed term of payment, without any summons or notice of default being required.

- 8.8. From the day of the default, the customer shall owe default interest of 1.5% per month, whereby part of a month shall be counted as a whole month. At the end of each month, the amount on which the interest is calculated shall be increased by the interest due for that month.

- 8.9. From the moment of default, the customer is liable to pay extrajudicial collection costs of 15% of the amount still owed by the customer, with a minimum of € 250.00.

- 8.10. TWA is also entitled, in the event of legal proceedings, to pass on all actual costs incurred by its legal counsel to the customer, regardless of the fixed compensation system laid down by law.

9. Retention of title and risk

- 9.1. TWA retains the ownership of all the goods it supplies to the customer under a contract

- 9.2. whether or not already paid for – together with the service pertaining thereto. This retention of title also applies to the claims that TWA acquires at any time against the customer due to the customer's non-compliance with any of their obligations under any such contract.

- 9.3. The risk of goods delivered by TWA to the customer (and/or related services), having regard also to articles 3 and 10, passes to the customer at the moment the goods are actually handed over to the customer (or to a third party on behalf of the customer).

10. Complaints

- 10.1. The customer must report any complaint to TWA in writing, stating the nature of the complaint. A complaint, regardless of what it relates to, does not give the customer the right to suspend or set off their obligations under their contract with TWA.

- 10.2. The customer must inspect the delivered goods immediately upon delivery. In doing so, the customer must check whether the actual performance is in accordance with the contract, namely:

- whether the goods delivered meet the quality requirements that may be set for normal use and/or other purposes, based on the visual inspection of the delivered goods;
- whether the goods delivered comply with the contract or order confirmation in terms of quantity (number, quantity, weight);

- 10.3. The customer must report visible defects to TWA within 3 working days after delivery at the latest, failing which the goods delivered or work carried out will be regarded as correct and accepted.

- 10.4. The right of the customer to complain, including in connection with the provisions in Article 9, is lost if the customer has used, processed or (impliedly) accepted the products supplied by TWA.
- 10.5. In the case of non-visible defects, the customer must submit a written complaint within 5 working days after discovery or after the defect should reasonably have been discovered, failing which the goods delivered or work carried out will be regarded as correct and accepted.
- 10.6. All other complaints must be reported by the customer to TWA within the agreed period for payment, failing which the right to complain is lost.
11. Force majeure
- 11.1. Force majeure on the part of TWA shall, in addition to the circumstances identified in Book 6 Article 75 of the Dutch Civil Code, be deemed to exist if TWA is prevented from fulfilling its obligations under the contract or the preparation thereof as a result of: unworkable weather or unworkable soil conditions, unreachable or impassable loading and unloading places, war (danger), civil war, riots, terrorism, acts of war, fire, water damage, flooding or shipping bans as a result of high or low tide or other traffic restrictions, epidemics, organised and unorganised strikes, sit-in strikes, lockouts, seizures, import and export impediments, measures by the authorities, defects to machinery, malfunctions in the delivery or supply of energy, lack of materials, raw materials, auxiliary materials and stock, defects to means of transport and obstacles to transport, otherwise both in the company of TWA as well as of its suppliers and those charged with storage or transport, and all other causes which have arisen outside the fault or sphere of risk of TWA.
- 11.2. In case of force majeure, indicated (delivery) terms will be extended with the period during which TWA is prevented from fulfilling its obligations by the force majeure.
- 11.3. If the delivery is delayed by more than 1 month due to force majeure, both TWA and the customer are entitled to terminate the contract - for the part that was not executed - subject to the provision of section 4.
- 11.4. If the force majeure occurs when the contract has already been partially performed, the customer shall retain the part of the goods already delivered or shall not dissolve the part of the agreement already executed or shall pay the purchase price due in both cases, unless the customer demonstrates that the part of the goods already delivered can no longer be effectively used or enjoyed as a result of the non-delivery of the remaining goods. In the latter case, if the remaining delivery is delayed by more than 1 month due to force majeure, the customer has the right to terminate the contract including the part already performed in order to return the delivered goods to TWA, at the expense and risk of the customer.
- 11.5. Neither TWA nor the customer will be liable to the other, or liable to compensate the other, in case of termination of the contract as a result of force majeure.
12. Liability
- 12.1. TWA excludes any form of liability to the customer for such time as the customer has not fully complied with its payment obligation.
- 12.2. TWA is not liable for loss suffered by the customer, including the obligation to pay compensation based on contract termination or tort, unless the customer proves that the loss is the result of an intentional act or gross negligence on the part of TWA, its board, or other managers.
- 12.3. TWA is under no circumstances liable for consequential loss.
- 12.4. Should TWA be liable in a particular case, the amount of the loss to be compensated to the customer shall always be limited to the cover provided by TWA's liability insurance and on the condition that TWA's insurer also pays out in the case in question, plus the insurance excess.
- 12.5. If the insurer (or policy) of TWA does not cover and/or does not pay out for the loss, the maximum liability of TWA is in all cases limited to the amount of the invoice or invoices together (not including VAT) related to the contract for which the loss occurred, up to a maximum of € 10,000.00.
- 12.6. In all cases in which TWA invokes the provisions referred to above and such claim is heard in court, any of TWA's employees who may be held liable may also invoke these provisions as if this article and the conditions stated herein were stipulated by the TWA's employees themselves.
- 12.7. The liability for third parties engaged by TWA within the meaning of Book 6 Article 76 of the Dutch Civil Code is expressly excluded. In the event that a third party is engaged, the customer must insure itself for this.
- 12.8. The customer indemnifies TWA against any potential claims by third parties who suffer loss in connection with the performance of the contract, regardless of the cause thereof.
- 12.9. In particular, TWA excludes any form of liability, however named, caused by the presence of bacteria in food packaging.
- 12.10. Claims for damages must be submitted by the customer to the competent court in accordance with these general conditions within one year of the claim being made (Article 15). After this period, the right to compensation shall lapse. This is a limitation period that cannot be interrupted pursuant to Book 3 Article 317 of the Dutch Civil Code.
13. Termination of contract, notice to terminate
- 13.1. Any contract between TWA and its customer ends by operation of law upon expiry of the period stipulated therein and/or upon completion of the obligations stipulated therein.
- 13.2. A contract between TWA and the customer which has the character of a permanent contract for an indefinite period of time may be terminated subject to a notice period of 3 months, commencing the last working day of the current month.
- 13.3. Without prejudice to the provisions of Article 9, TWA may terminate part of, or the entire, contract with immediate effect - without being obliged to pay any compensation to the customer and without prejudice to TWA's right to claim compensation from the customer - if the customer is declared bankrupt, applies for or obtains a moratorium, applies for and is granted by the court (if a natural person) a debt rescheduling arrangement applicable, is dissolved (if a legal entity or partnership), loses the power to dispose of any of their assets by attachment upon essential assets lasting longer than 3 months or by being placed under guardianship or otherwise, permanently ceases their business, or is in breach of any of their obligations, irrespective of whether these arise from a purchase contract or another type of agreement or arising under the law.
- 13.4. In the cases as referred to in the preceding paragraph, the amount owed by the customer to TWA, including compensation, shall become immediately and fully due and payable.
- 13.5. In addition, TWA may terminate a contract with immediate effect if there is a change of control (actual, formal or financial) in the customer's business or if the customer does not provide additional security in accordance with article 7.
14. Joint and several liability, prohibition of transfer, and pledging of rights and/or obligations
- 14.1. If the customer consists of more than one (legal) person at any time during the execution of any contracts with TWA, each of these (legal) persons are jointly and severally liable towards TWA for the obligations arising under such contracts.
- 14.2. The customer may not transfer rights or obligations under any contract with TWA to a third party without the prior written permission of TWA. The customer is explicitly not allowed to pledge their claim against TWA, for whatever reason, to a third party, without the prior written permission of TWA. If TWA grants permission, this is given subject to these terms and conditions.
- 14.3. This prohibition on the transfer or pledging of rights and/or obligations also has effect under property law.
15. Applicable law and competent court.
- 15.1. All legal relationships between TWA and the customer are governed by Dutch law.
- 15.2. All disputes, without exception, that arise at any time between the parties as a result of the relationship governed by these general conditions, will, as far as they exceed the competence of the sub-district court, subject to the judgement of the Court in Gelderland, sitting in Zutphen, with the proviso that TWA is at all times entitled to bring the dispute before the competent court in the jurisdiction where the customer has its registered office.
16. Other provisions
- 16.1. If any provision of these general conditions should be unenforceable or voidable, the remaining provisions shall nevertheless remain in force.
- 16.2. In such a case, TWA stipulates that any such ineffective clause shall be replaced by a clause with as much as possible the same meaning and effect as the text of the relevant article.