

## TERMS AND CONDITIONS HENDIC B.V.



**We are Hendic B.V., supplier of water storage systems used in agriculture, horticulture, aquaculture and industry. We deliver storage systems such as steel tanks, reservoirs, plastic tanks/containers and temporary storage worldwide. We customise these storage systems to local requirements and conditions, if required.**

**If you would like to know more, please get in touch by telephone on +31 (0) 76 597 666 5, by email to [info@hendic.nl](mailto:info@hendic.nl) or visit our website [www.hendic.nl](http://www.hendic.nl). CoC: 20147147**

Our terms and conditions are below. Should you have any questions concerning these, please do not hesitate to contact us.

### **Article 1. General**

1.1 These conditions apply to all offers, order confirmations, orders, acceptances, transactions, activities, payments, etc. relating to items delivered by us and the services performed by us, as within the scope of contracting/subcontracting work.

1.2 Whenever "client" is mentioned in these conditions, this is understood as the customer purchasing items or receiving services from us, irrespective of which agreement or legal transaction forms the basis of this. "Order" is understood in these conditions as the client's wish insofar as accepted by us.

1.3 In these conditions "consumer" is understood as the client, who is a natural person and not acting in execution of a profession or business.

1.4 Provisions added or amended by us by hand or electronically take precedence over the printed provisions of these conditions. Written agreements created after the contract or legal transaction corresponding to these conditions have been established likewise take precedence over the provisions of these conditions.

1.5 Agreements made verbally or by telephone are only binding if they have been confirmed by us in writing. Unless stated otherwise, in these terms and conditions "in writing" is also understood as "by email".

1.6 Supplementary and/or deviating conditions – also understood to include purchase conditions – from the client in no instance apply to contracts we have concluded, unless we have accepted these conditions in writing and

explicitly, in which case these conditions otherwise remain in force, and prevail in the event of contradictions.

1.7 If a stipulation in these conditions is declared inapplicable based on its unreasonable nature or based on good faith, the conditions otherwise remain applicable undiminished. In that case, we enter into consultation with the client in order to agree on a new provision to replace the null or void provision, with the aim and effect of the provisions to be replaced being considered.

### **Article 2. Offer/order**

2.1 Our offers are merely for information purposes, and do not bind us. We are only bound once we accept a written order.

2.2 If the order and acceptance or order confirmation differ from each other, we are only bound by what we have agreed in the acceptance or order confirmation.

2.3 Images, catalogues, diagrams, technical descriptions, measurements, weight specifications, reports, models and other data we provide concerning the appearance or the capacity of the items to be delivered and concerning the nature of the services we are to perform provide only an indication without the items we deliver having to fulfil these. The data for information purposes does not bind us, and is not part of the contract. We do not accept any liability if the indicative nature is used by the client or third parties within the scope of installing the items delivered, without us being involved in this. The client indemnifies us against any third-party liability in this regard.

2.4 Amendments imposed while executing the order – including contract variations – must be agreed between us and the client, in the absence of which we will not perform these.

2.5 We reserve our right to have third parties perform portions of the order. If the client is a consumer, we are always responsible for the work of that third party.

2.6 On or during the conclusion of the order contract, if we inform the client of the technical requirements with which the items we deliver comply, unless the client reports otherwise we assume that the client declares agreement with those technical requirements. In the case of technical requirements requiring high precision (such as measurements, shape, material strength and foundation requirements), when placing the order, the client must provide us with detailed and corresponding data, in the absence of which we are able to suspend our obligations or dissolve the contract. The client guarantees the accuracy of the data it provides. Any damage resulting from inaccuracies occurring in this data are at the expense and risk of the client.

2.7 If we use certain material or perform the order in a certain way under instruction from the client or according to its indications, this is at the expense and risk of the client. We do not accept any liability for any damage/consequential loss in relation to using certain materials and/or performing the order following the client's indications. The client indemnifies us against any third-party liability in this regard.

2.8 If the client already intends, before entering into the contract, to deliver the items we deliver on to third parties directly or indirectly, not located or residing in the Netherlands, and particularly if this concerns the USA or Canada, the client is obliged to communicate this to us in writing prior to concluding the contract. The sale/resale, delivery or other form of supplying items we deliver by the client to third parties must be in accordance with all applicable legislative and regulatory requirements.

2.9 If the items we supply must be delivered, installed or used outside the Netherlands, the client is obliged to report to us prior to concluding the contract whether technical requirements or standards are placed in the country concerned with which the items delivered must comply. If the client does not proceed to do so promptly, we may assume that the items we deliver will comply with the requirements in the country concerned. We are not liable should it subsequently transpire that this is not the case. The client indemnifies us against any third-party liability in this regard.

#### **Article 3. Prices**

3.1 All prices in our offers exclusively apply to the quantities and services described stated with these.

3.2 If, after the acceptance date of the order, the invoices on which our prices are based change (including although not limited to situations in which (a) our suppliers change their prices, and/or (b) the euro is re/devalued, and/or (c) taxes, social charges, import duties, freight costs, etc. change), we are entitled to amend our prices toward the client accordingly. If the client is a consumer, we honour the prices three months after the acceptance of the order or, in the case of a previous price increase, the client is entitled to dissolve the contract.

3.3 Unless agreed otherwise explicitly and in writing, the prices we state exclude VAT, import and export duties and other taxes, charges and fees.

3.4 Besides costs of the items to be delivered and/or the services to be performed, the client may also be charged for shipping, travel and insurance costs, etc.

#### **Article 4. Execution period**

4.1 The period for delivering the items or performing the services is indicated according to good faith and approximately, although it is not binding and does not involve a deadline, unless explicitly agreed otherwise.

4.2 Violation of the period stated in 4.1 – due to force majeure or any other cause whatsoever – only entitles the client to suspension or dissolution, whether or not supplemented with a right to compensation, once a period of three months after the force majeure or other cause has elapsed. This provision does not apply to the client as a consumer, insofar as his/her right to dissolve or suspend is limited or excluded.

4.3 If we have agreed that the contract is to be executed in phases, we are able to postpone the execution of those components of the contract corresponding to the following phase until the time when the client has approved the results of the previous phase in writing. In that case, the

client is not entitled to compensation and cannot dissolve the contract.

#### **Article 5 Force Majeure (Temporary or otherwise)**

5.1 If a contract cannot be executed due to circumstances beyond our control, both parties are entitled wholly or partially to dissolve the contract without legal intervention, unless the force majeure is only of a temporary nature and does not persist for more than three months, or if the force majeure has resulted in it only being impossible to perform a non-essential component of the contract. We are not liable if we are unable to meet our obligations based on the contract as a result of force majeure.

5.2 Insofar as we have met or will partially be able to meet our obligations based on the contract since the time the force majeure arose, and we believe the portion met or to be met is assigned independent value, we are entitled to invoice separately for the portion executed or to be executed. The client is obliged to pay this invoice as if it were a separate agreement.

5.3 Force majeure is understood to mean circumstances that impede compliance with our obligations, while those circumstances cannot be attributed to us. Force majeure on our part is in any event understood as, although not limited to:

- (i) force majeure of our suppliers;
- (ii) our suppliers not observing their obligations properly;
- (iii) transport difficulties;
- (iv) defectiveness of third-party items, equipment, programming or materials;
- (v) industrial action within our company;
- (vi) excessive staff absence;
- (vii) government measures (including import and export prohibitions and travel and visa restrictions);
- (viii) drastic changes to exchange rates;
- (ix) electricity failure;
- (x) serious business disruptions, including internet, data network and telecommunication facility disruptions (such as due to cybercrime or hacking);
- (xi) fire;
- (xii) energy and/or raw materials crisis, also including abnormal prices increases of raw materials and energy;
- (xiii) climatic conditions as a result of which our activities cannot be performed properly (such as strong wind and low temperatures);
- (xiv) natural disasters;
- (xv) war and terrorist attacks; and
- (xvi) other situations that we believe fall outside our sphere of influence, temporarily or permanently impeding us from observing our obligations toward the client

#### **Article 6 Delivery, Assembly and Installation**

6.1 Delivery occurs 'ex factory or warehouse' of Hencid, unless agreed otherwise. The items sold are at the expense and risk of the client from the moment the items are ready for dispatch at Hencid's company gates, and Hencid has commenced the process of transporting the items to the client. This also applies in the case of carriage-paid delivery.

6.2 We deliver the items to the address stated by the client. The client must ensure that the delivery location and access routes are free of any obstacle(s) so that the delivery can occur properly. Damage arising as a result of not complying with this condition is at the expense and risk of the client.

6.3 The client sees to it that the necessary provisions, conditions and facilities are provided promptly and correctly, in order for us or the auxiliary persons we engage to perform the activities. Damage arising as a result of not complying with this condition is at the expense and risk of the client.

6.4 The client is obliged to take the items at the time we deliver these/have these delivered to the client. If the client refuses to take items or has provided insufficient information or insufficient instructions required for a proper delivery, we are entitled to store the items at the expense and risk of the client. We are also entitled to charge for supplementary shipping and packing costs.

6.5 Articles 4 and 5 apply undiminished to assembly and installation periods.

#### **Article 7 Retention of title**

7.1 We retain the ownership of all items delivered to the client, as long as the client has not met its payment obligations toward us in full based on the contracts concluded with us. This includes claims concerning failure in complying with these contracts.

7.2 As long as the client does not yet own the items, the client is not entitled without prior written consent from us to sell, to encumber or otherwise in any way to take ownership of the items, other than in the client's normal business activities. If third parties seize the items delivered of which we retain ownership, or wish to establish or exert rights over these, the client is obliged to notify us of this as soon as reasonably possible. In the event the items the ownership of which is retained (or a part of these) is seized, suspension of payment (provisional or otherwise) or bankruptcy of the client, the client is obliged to refer the bailiff, the administrator or the receiver to our ownership rights.

7.3 Following payment of the claims mentioned under 7.1, all claims are transferred to the client, subject to an unpropertied right of lien to these items to ensure all other claims.

7.4 As soon as items have actually been delivered to the client or to a third party indicated by the client, or items have been made available to the client or to a third party indicated by the client, as buyer the client bears all risks of damage, loss and destruction.

7.5 The client is obliged to ensure the items delivered under retention of title and to keep these insured against fire, explosion and water damage, as well as against theft, and to provide us this insurance policy for inspection on request.

#### **Article 8. Complaints**

8.1 Complaints are understood to mean the client's grievances concerning the items delivered or service

performed, or invoices relating to these. The client must examine the items delivered or the services performed immediately (or have this done). It must furthermore verify whether the items delivered comply with the contract, in terms of both quality and quantity.

8.2 Complaints concerning accounts must be submitted to us within fourteen days after the invoice date.

8.3 Complaints concerning visible or otherwise perceptible deviations or faults must be indicated on the delivery receipt upon delivery, or submitted to us in writing within seven days following of the delivery of the item or the end of the service being performed.

8.4 Complaints concerning non-visible or otherwise non-perceptible deviations or faults that are only apparent during use must be submitted to us within seven days after the fault or deviations becomes known to the client, within reason.

8.5 In any case, complaints can no longer be submitted to us after three months following the invoice date.

8.6 In the event the complaint is justified, we are entitled at our discretion to repair the items relating to the complaint, to replace them with similar items, to perform the service once again or to credit the returned items. We are not liable for any damage/consequential loss relating to a justified claim.

8.7 Items can only be returned to us following prior written approval. We only accept returns if these occur with postage paid.

8.8 Complaints of any nature whatsoever do not suspend the client's payment obligation, unless this is a consumer.

#### **Article 9. Payment**

9.1 The client pays invoices within fourteen days following the invoice date into our bank account or at our office.

9.2 If during or following the delivery of the item or performance of the services we become aware that the client is in unfavourable circumstances financial or otherwise, meaning its compliance with its obligations toward us is uncertain, we are at liberty to request immediate payment or collateral, in the absence of which we may cease or suspend our further deliveries of items or performance of services and/or take back the items delivered. In the latter case, the client already unconditionally and irrevocably authorises us to enter the premises where the items are located. The above does not affect exercising other rights based on this contract and the law.

9.3 If multiple deliveries of items or performances of services, for which more than one invoice is sent, occur and an invoice has not been paid in accordance with the above provisions of this article, we are at liberty unilaterally to suspend any new delivery of items or performance of services. In the event of non-payment, following a reasonable period we may proceed to dissolve the contract insofar as this has not yet been executed, without prejudice to our other rights based on the contract and the law.

9.4 All payments must be performed without any deduction or settlement. This provision does not apply if the client is a consumer who has provided multiple orders.

#### **Article 10. Default**

10.1 As soon as the client fails to observe any obligation toward us promptly and properly, it is in default without any notice of default being required.

10.2 The client is also deemed to be in default in the case of the client's bankruptcy, suspension of payment (provisional or otherwise), cessation or liquidation of business, death, change of legal form, change or residential or business address (without prior notification), as well as in the event of attachment at its expense.

10.3 As soon as the client is thus in default, all amounts to be paid to us are payable immediately. We are also entitled to suspend our obligation(s) – further or otherwise – toward the client or to dissolve the contract, if necessary taking back items delivered under retention of title (see under 7). We are not obliged to any compensation in the event of suspension or dissolution. The above provisions of this article do not affect our further rights based on the contract or the law.

10.4 From the day of the client's default, it owes us compensation over the amounts/invoice amounts due on account of loss of interest of 1.5% per month – or the percentage of statutory interest, if this is greater. The interest over a section of a month is calculated as one full month.

10.5 All disputes and extrajudicial costs associated with collecting any partially or entirely unpaid invoice is charged to the client, always with a minimum of EUR 250.

10.6 We are entitled to have the payments made by the client serve in the first instance to pay for and reduce the costs, subsequently to reduce the interest in arrears, and lastly to reduce the principal sum and the current interest. We may refuse the full repayment of the principal sum, if the client nevertheless fails to pay the interest in arrears and current interest, as well as the costs.

#### **Article 11. Warranty** (see also article 8. Complaints)

11.1 The materials that we deliver and process meet the quality as is usual in the sector. Secondary deviations, such as those relating to colour, size, model, thickness or weight, do not apply as a fault and do not fall within the warranty. We are not liable for this. The client indemnifies us against any third-party liability in this regard. With regard to the materials we process of which we are not the manufacturer, our warranty obligations are in no instance greater than the manufacturer's warranty obligations. The text of the product manufacturer's warranty is available from us on request.

11.2 For a period of six months following the date of issue, we guarantee that the items we deliver can be used for normal purposes, unless explicitly agreed otherwise in writing. In the case of different usage, the client must have notified us in writing before entering into the contract, in the absence of which we do not provide any warranty.

11.3 If the items we deliver are part of a larger whole, we must install the items delivered ourselves for the warranty condition to enter into force.

11.4 The client is unable to invoke this warranty scheme if the fault arose as a result of injudicious or improper use of the item, or – without our explicit and written permission – the client or third parties have introduced alterations or have attempted to introduce these to the item, or have employed the item for purposes other than those for which the item is intended according to the contract. In that case, the client is liable for any damage as a result of the fault arising and the client indemnifies us against any third-party claim in this regard. Neither can the client any longer invoke this warranty scheme if the client moves the item or has it moved following installation, unless we agree something otherwise explicitly and in writing.

11.5 Excluded from the warranty are:

- damage to the item as a result of fire, explosion, flooding, direct or indirect lightning strike, earthquake, nuclear reactions, war, threat of war, civil war or riot;
- damage caused by actions by persons other than us (our employees) or third parties we engage;
- damage by animals, vandalism, theft and wilful damage;
- damage arising through extreme climatic conditions such as hail, hurricanes, cyclones, sandstorms, etc.
- damage arising through aggressive steam, liquids, cement, plaster, paint, cleaning agents, etc.

#### **Article 12. Cancellation**

12.1 In the event of full or partial cancellation by the client for items we are able to deliver from stock, as compensation for lost profit and administrative and staff costs incurred we are entitled to compensation of 15% of the sales value of the items ordered. The same regulation applies in the case of cancelling an order as for performing services. Cancellation always occurs in writing.

12.2 It is not possible to cancel an order relating to items that are being or have been manufactured specially according to the client's wishes.

#### **Article 13. Liability**

13.1 We are only liable for direct damage suffered by the client, which is directly and exclusively the result of our culpable conduct or negligence. Our liability, on any basis whatsoever, is limited to the invoice amount actually paid, at least the portion of the invoice value relating to the liability.

13.2 If our liability is covered by our liability insurance, the damage is limited to the amount paid out by our insurer.

13.3 Liability for consequential loss (including although not limited to loss resulting from death and injury, business damage, loss of earnings and/or stagnation damage) is excluded at all times. Also excluded is our liability for damage suffered by the client or third parties resulting from incorrect and/or incompetent use of items we deliver.

13.4 The client indemnifies us for all third-party claims for compensating any damage resulting from or associated with items we deliver.

13.5 If, on any basis whatsoever, we are liable to compensate for damage, in the case of a minor value of the order provided, the damage will be moderated accordingly.

13.6 If we directly or indirectly cause damage to a third party through the fault of the client, and the third party holds us liable, the client is obliged to indemnify us.

13.7 The client is obliged to take out adequate liability insurance with regard to liability for items delivered and/or activities performed by the client for third parties. That insurance must offer cover for damage suffered in the countries where the client delivers items or performs activities. If third parties reside or are located in the USA or Canada, or the client delivers the items and/or performs its activities in the USA or Canada, the validity range of its liability insurance must extend to this. The client is obliged to present the policy in question for our inspection on request.

#### **Article 14. Applicable law/disputes**

14.1 Our contracts are subject to Dutch law. The applicability of the Vienna Convention is excluded.

14.2 All disputes resulting from or associated with contracts we conclude will exclusively be presented to the competent judge of the legal district of Leeuwarden, insofar as statutory provisions do not oppose this.

#### **Article 15. Sanctioned countries**

15.1 The client is not permitted to transfer, to sell, to dispose of or to deliver the items we deliver to a party that is located in a country that has been sanctioned by the United Nations, the European Union, the United States and/or other countries, or to transfer, to sell, to dispose of or to deliver to a customer directly/indirectly sanctioned by the aforementioned parties or bodies, or a sanctioned end user, or to transfer, to sell, to dispose of or to deliver the items for a sanctioned end use.

15.2 The client indemnifies us for any consequences in the broadest sense of the word resulting from a violation, deliberate or unintentional, by the client of the prohibition included in the previous paragraph, including although not limited to a penalty (administrative or otherwise).

#### **Article 16. Intellectual and industrial property**

16.1 We retain the intellectual and industrial ownership of all items and services we provide, such as diagrams, inventions, software, designs, quotations, forming, colours, manufacture and choice of material. The client is not permitted to introduce alterations to the items, unless resulting otherwise based on the nature of the items delivered, or we have agreed otherwise explicitly and in writing. Any designs, sketches, diagrams, films, software and other material or files (electronic or otherwise), created by us within the scope of the contract, remain our property – irrespective of whether this was provided to the client or to third parties – unless we have agreed otherwise explicitly and in writing. All documents such as designs, sketches, diagrams, films, software and files (electronic or otherwise) provided by us are exclusively intended to be

used by the client, and may not be multiplied, published or disclosed to third parties without our prior consent, unless resulting otherwise based on the nature of the documents provided. We retain the right to use any knowledge acquired through executing the activities for other purposes, insofar as no confidential information is hereby brought to the knowledge of third parties. The client indemnifies us for third-party claims relating to intellectual property rights to materials or data provided by the client, which are used when executing the contract.

16.2 Insofar as property intended in 16.1 has been embodied in items, including written documents, these must be returned to use at our first request under penalty of EUR 5,000 per day. Items for delivery for which we are committed are excluded from this provision.

#### **Article 17. Privacy and data protection**

17.1 When we enter into a contract or a quotation is requested, we ask the client for personal data. This data is used for assessing the request, executing the contract, analyses, risk management and for marketing purposes. The personal data we obtain is processed according to the General Data Protection Regulation (GDPR). The personal data obtained is not used for purposes other than the purposes for which the data was obtained, and the data will not be stored for any longer than strictly necessary. If you would not like to receive information concerning our products and services, please notify us of this in writing. Further information on how we process personal data can be found in our privacy statement, available at via [www.hendic.nl/privacystatement](http://www.hendic.nl/privacystatement)