

Version 1.1 01-01-2013

GENERAL CONDITIONS HEISTERKAMP USED TRUCKS BV

1. These conditions shall apply to all quotations and agreements for purchase/sale of trucks and/or on the instruction of Heisterkamp Used Trucks BV, with registered office in Oldenzaal, The Netherlands and its hereinafter to be referred as HEISTERKAMP.
2. Additions or exceptions to these conditions must be agreed in writing; these additions and exceptions shall only apply for the agreement for which they are made.
3. The rights and obligations arising from agreements between HEISTERKAMP and buyer may not be transferred by buyer to third parties, except with the written consent of HEISTERKAMP.
4. The provisions of section 1 title 7 of book 7 BW (Dutch Civil Code) (order) with the exception of Article 412 shall not apply to the present legal relationship unless otherwise specifically provided in the agreement or in these conditions.
5. Should the buyer refer to his own General Conditions, the terms of the buyer shall not be applicable.

II. QUOTATIONS

All quotations shall be without obligation and shall be valid for a period of 30 days, unless otherwise agreed in writing. A quotation which contains a time-limit may nevertheless be revoked by HEISTERKAMP, even after receipt of order, provided this is done within 5 days. No rights can be derived from the quote or offer if the vehicle is no longer available in the meantime.

III. AGREEMENTS

An agreement shall be formed under the suspensive condition that HEISTERKAMP has approved and confirmed the order in writing or a start has been made on the execution of the order. The contents of the agreement shall be determined by the proposal and/or confirmation of order of HEISTERKAMP and these general conditions.

IV. PRICES

1. All price quotations and the prices which HEISTERKAMP charges are the prices applicable at the time of the quotation or of the conclusion of the agreement, ex works, Oldenzaal, excluding VAT and other costs attaching to the agreement, such as levies and tariffs.
2. Where after making a quotation a change occurs to one of the factors determining the price, HEISTERKAMP shall be entitled to adjust the prices accordingly, even where the agreement has in the meantime been concluded.
3. Price revisions of more than 10% shall give the buyer the right to cancel the agreement, provided this is done in writing and within seven days of receipt of our notification thereof. A cancellation as indicated above shall not give buyer any right to compensation for any damage whatever.

V. PAYMENT

1. Buyer shall be obliged to pay all invoices before delivery of the trucks in question or before the work in question is carried out (payment in advance), unless otherwise agreed in writing. HEISTERKAMP shall not deliver the trucks in question or carry out the work in question until the invoice has been paid in full.
2. Where invoices are not paid in cash in accordance with Article V, paragraph 1, buyer shall be in default simply by the passing of the agreed payment date, without any notification of default being required for this, irrespective of whether the exceeding of such payment date is the fault of buyer.
3. Notwithstanding the other rights accruing to it, HEISTERKAMP shall then be authorised to charge interest on the outstanding amount of 1% per month or part of a month, chargeable from the due date in question.
4. All extrajudicial and judicial costs incurred by HEISTERKAMP by virtue of a dispute with buyer, both as plaintiff and as defendant, shall be for account of buyer. The extrajudicial collection costs to be established in accordance with the collection tariff of the Netherlands Bar Association, the judicial collection costs on the actual amount paid for the proceedings by HEISTERKAMP, even where this exceeds the liquidated costs of the proceedings.
5. Incoming payments shall serve to settle the longest outstanding items - including interest and costs - even where buyer states otherwise in this respect.
6. In case of late payment any adverse exchange rate difference shall be for account of buyer. Reference dates are the due date of the invoice and the date on which it is paid.

VI. DELIVERY TIME, DELIVERY, RISK

1. The time of delivery mentioned or agreed in the quotation and/or confirmation of order shall not be regarded as a deadline, not even if this is expressly accepted by buyer. In case of late delivery, HEISTERKAMP shall only be in default after written notification of default. Time of delivery shall also be understood as time of repair.
2. The time of delivery mentioned or agreed shall in any case, but not exclusively, be automatically extended by the period(s) during which:
 - there is a delay in the supply and/or dispatch and/or of any other circumstance temporarily holding up the execution, irrespective of whether this can be blamed on HEISTERKAMP;
 - buyer defaults in one or more obligations towards HEISTERKAMP or there is a justified fear that he will default in these, irrespective of whether the reasons for this are justified or not;
 - buyer does not put HEISTERKAMP in a position to execute the agreement; this situation occurs among other things where buyer remains in default of notifying the place of delivery or making available data, trucks or facilities necessary for the execution.
3. Delivery in the Netherlands shall be carried out ex works in Oldenzaal, unless otherwise agreed in writing. All trucks shall be transported for account and risk of buyer, even where the dispatch is made carriage paid.
4. Where HEISTERKAMP on request of buyer is responsible for dispatch of the trucks or where the agreed parity of the ICC Incoterms 2010 lays this responsibility on HEISTERKAMP, the time, method of dispatch and dispatch route shall be its choice. Transport insurance shall only be taken out by HEISTERKAMP on the express request of buyer; all costs relating to this shall be for buyer's account.
5. Delivery shall be deemed to have taken place at the time when the trucks are made available to HEISTERKAMP by buyer. Where buyer does not take the trucks, they shall be stored for his account and risk or sold by HEISTERKAMP. HEISTERKAMP shall be entitled to recover its claim from the proceeds.
6. Delivery outside the Netherlands shall be carried out Ex Works (EXW) Incoterms 2010, unless one of the other Incoterms of the International Chamber of Commerce (ICC), Edition 2010, is agreed.
7. Partial deliveries shall be permitted.
8. HEISTERKAMP shall not be liable if the vehicle for any reason is not allowed in the place or country of destination
9. Loss of or damage to the vehicle after the risk has passed to the buyer absolve him from his obligation to comply with the full purchase price.
10. The buyer also undertakes that he will not use the vehicle for military purposes or will sell to customers whose he knows this will use for military purposes

VII. GUARANTEE/CLAIM

1. The trucks supplied by HEISTERKAMP shall meet the specifications as set out in the corresponding purchase contract. No guarantee shall be given, unless otherwise indicated in the purchase contract.
2. On used trucks there is no guarantee provided by HEISTERKAMP, also not for hidden defects, unless this is expressly stated in the contract of sale.
3. It is known to the buyer, that HEISTERKAMP is no official dealer and that is why he can buy a used truck against a relatively low price. Buyer is aware of the risk of (hidden) defects. If parties agree on a guarantee this must be specific in writing to be included in the purchase agreement.
4. Where buyer calls upon the guarantee given by HEISTERKAMP in the corresponding purchase agreement or makes a claim, HEISTERKAMP shall assess the guarantee or complaint and if necessary settle taking into account what is provided in the purchase contract in this respect. Guarantee claims may not be transferred to third parties.
5. On pain of claiming lapse of its right, buyer must notify HEISTERKAMP in writing of any complaints relating to the level of the invoiced amount, visible deficiencies in the trucks delivered within 3 days after receipt or delivery, giving an accurate description of the complaints. For all other claims a period of 5 days after the defects became known or should have become known shall apply. The trucks in question must be made available to HEISTERKAMP for examination upon first request.
6. Claim is not possible where:
 - the trucks have been used for a purpose other than that for which they are normally intended or in the opinion of HEISTERKAMP they have been used or transported injudiciously or have been repaired by buyer or a third party;
 - the damage has been caused by negligence of buyer (for example by insufficient maintenance) or by buyer having acted contrary to instructions, indications and advice of HEISTERKAMP;
 - buyer has not fulfilled his obligations towards HEISTERKAMP (both financially and otherwise).

7. Should buyer make a claim taking into account the provisions of this article and his claim be found to be justified by HEISTERKAMP, HEISTERKAMP shall at its discretion, replace the trucks involved free of charge (after which the replaced trucks shall become its property) or repair them or give a price reduction.

8. The handling of a claim shall not suspend the payment obligation of buyer.

9. Where apart from the cases described above consideration is given to a complaint, this shall be carried out entirely without obligation and buyer may not derive any rights from it.

VIII. INSPECTION

Buyer shall have the right, for own account, to (independent) inspect the truck before delivery at a time and place determined by HEISTERKAMP.

IX. NON-FULFILMENT/CANCELLATION/SUSPENSION

1. HEISTERKAMP shall be authorised to cancel the agreement in full or in part or to suspend the execution, with immediate effect, without judicial intervention, notwithstanding the other rights to which it is entitled (to fulfilment and/or compensation), where:

- buyer acts in contravention of any provision of the agreement between parties;
- buyer applies for suspension of payment or makes an application for adjudication of bankruptcy;
- bankruptcy of buyer has been applied for;
- the business of buyer is shut down or liquidated;
- a private agreement is offered.

In these cases any claim against buyer shall be immediately payable, without HEISTERKAMP being held to any compensation or guarantee.

2. The provision of paragraph 1 of this article shall be applicable accordingly where buyer, after being invited to do so in writing, has not provided security which is suitable in the view of HEISTERKAMP within seven days.

3. In the event that the customer exceeds the term of payment and/or receipt by more than fourteen days, without being obliged to issue any further notice HEISTERKAMP is entitled to resell the trucks sold to the customer, in which case the customer forfeits any down payment made to HEISTERKAMP as compensation for losses incurred, unless the customer is able to prove that the losses incurred by HEISTERKAMP are less than the down payment.

X. RESERVATION OF TITLE

1. Delivery shall only be carried out on reservation of title. This reservation shall apply with regard to claims to payment of all trucks delivered or to be delivered by HEISTERKAMP to buyer by virtue of any agreement and/or work carried out within the framework of delivery as well as for claims for the default of buyer in the fulfilment of these agreements.

2. HEISTERKAMP shall be authorised in the cases mentioned in article IX to take back the trucks delivered which have remained its property in accordance with the previous paragraph. Such taking back shall be deemed to be cancellation of the agreement(s) signed with buyer. Buyer shall authorise HEISTERKAMP where necessary irrevocably to remove the trucks in question (have the trucks in question removed) from where they are located.

3. Buyer shall be authorised, where and in so far as is necessary by virtue of the normal execution of his business, to have disposal of the trucks on which the reservation of title rests. Should buyer make use of this authority, he shall be obliged only to deliver the trucks on which the reservation of title rests to third parties also only on reservation of the titles to ownership of HEISTERKAMP. He shall also be obliged to grant HEISTERKAMP on first request a non-possessory lien on the claims which he has or shall obtain on these third parties. Should the buyer refuse this, this provision shall be deemed to be an irrevocable power of attorney to HEISTERKAMP to bring this lien into being.

XI. RETENTION RIGHT

HEISTERKAMP shall be authorised to suspend the fulfilment of the obligation to deliver trucks of buyer, which he has in his possession by virtue of the order, until the claim of HEISTERKAMP with regard to these trucks has been paid in full including interest and costs.

XII. PART-EXCHANGE

Where buyer continues to use a part-exchanged motor vehicle in anticipation of the delivery of the motor vehicle ordered by him, all costs of the first mentioned motor vehicle and any diminution in value thereof shall be for his account.

XIII. LIABILITY

1. HEISTERKAMP shall not be liable for damage caused as a result of any default in the fulfilment of its obligation(s) towards buyer. The fulfilment of the obligations under guarantee/claim as described in article VII shall apply as sole and full compensation. Any other claim for compensation, including claims for trading losses (losses due to stoppage, loss of income and any other consequential losses of whatever nature) and losses incurred as a result of liability in relation to third parties are also expressly excluded, unless intent or gross negligence by HEISTERKAMP or managerial subordinates is involved.
2. HEISTERKAMP shall also not be liable for intent or (gross) negligence of (non-managerial) subordinates or of others which it has called in by virtue of the execution of the agreement.
3. HEISTERKAMP shall not accept any liability for advice given by or on behalf of it.
4. HEISTERKAMP shall not be liable for damage to motor vehicles of third parties which are located on its site.

XIV. FORCE MAJEURE

Force majeure shall be understood in the sense of these general conditions to be any circumstance outside the will and agency of HEISTERKAMP, whether or not foreseeable at the time of entering into the agreement, as a result of which fulfilment may not reasonably be demanded of HEISTERKAMP, such as war, government measures, lack of raw materials, factory or transport disruptions of any nature whatever, strikes, lockout or lack of personnel, quarantine, epidemics, hold-ups due to frost, default of third parties called in by HEISTERKAMP for the execution of the agreement, etc.

XV. PARTIAL NULLITY

Should one or more provisions from this agreement with buyer not be or not be entirely legally valid, the other provisions shall be fully maintained. Instead of the invalid provisions a suitable regulation shall apply which comes as close as possible to the intention of parties and the economic result sought after by them in a legally effective way.

XVI. PLACE OF FULFILMENT, APPLICABLE LAW, COMPETENT COURT

1. The seat of HEISTERKAMP shall be the place where buyer must fulfil his obligations towards HEISTERKAMP.
2. Solely Dutch law shall apply to all quotations and agreements of HEISTERKAMP, with the exception of the provisions of Section 6:5.3 BW (Dutch Civil Code) and the Convention on the International Sale of Goods
3. All disputes which may arise as a result of the agreement signed between buyer and HEISTERKAMP, or from further agreements, which may follow them, shall be settled by the competent court in Almelo.