

# GENERAL TERMS AND CONDITIONS OF HURKMANS ET B.V., WITH ITS REGISTERED OFFICE IN MILHEEZE

Version 2021

Filled with the Chamber of Commerce in Eindhoven on 01-04-2021 with number 50080113.

If there is any inconsistency between this translation and the Dutch text of the "ALGEMENE VOORWAARDEN VAN HURKMANS ET B.V., GEVESTIGD TE MILHEEZE (Versie 2021)", the Dutch text will prevail.

## Definitions:

Contractor/we: the private limited company HURKMANS ET B.V., with its registered office in Milheeze, registered in the commercial register of the Chamber of Commerce under number 50080113.

Veterinary Practitioner: the person who is admitted to the practice of veterinary medicine under (currently) the "Wet dieren"/Animals Act and who is registered in the appropriate register and who performs veterinary treatments and/or, in the context thereof, supplies medicaments and/or sells and/or administers and/or provides other veterinary advice and services. The Veterinary Practitioner works at or for the Contractor.

Client/he/it: the natural person or legal entity that enters, has entered or is negotiating on entry into an agreement with the Contractor in relation to the sale and/or supply of goods, and the provision of services.

Patient: the animal offered by the Client for treatment, the animals or groups of animals and/or the animal, the animals or groups of animals over which and/or for which medicines are supplied and/or administered and/or other veterinary advice is given and veterinary services are provided.

Order confirmation: as defined in Article 3.1.

Written/in writing: by letter, fax or electronically.

## Article 1 - Applicability of general terms and conditions/general:

- 1.1. These general terms and conditions will apply to all our offers, quotations, supplies and services, as well as to all agreements and additional agreements.
- 1.2. Additional and/or different terms and conditions – also including general terms and conditions – of the Client will not form part of the agreement between the Contractor and the Client and, as such, will not bind the Contractor, except where the Contractor accepts all or some of the terms and conditions of the Client in writing. The applicability of the general terms and conditions of the Client is explicitly rejected.
- 1.3. Deviations from these general terms and conditions will only be binding if the parties have agreed on them in writing and solely for the offers, quotations, agreements and additional agreements to which they apply. These general terms and conditions will remain in full force in relation to other offers, quotations, agreements and additional agreements.
- 1.4. If these terms and conditions have also been drawn up in a language other than Dutch, the Dutch text will

always be decisive in the event of any discrepancies and in relation to the interpretation of these general terms and conditions.

- 1.5. Should any provision of these general terms and conditions be void or voidable, the other provisions will remain in full force and the void or voidable provision of these general terms and conditions will be replaced by a valid provision in which the object and purport of the void or voidable provision is taken into consideration.
- 1.6. Should there be any inconsistencies between these general terms and conditions and the agreement or purchase agreement entered into between the Contractor and the Client, the agreement or purchase agreement will prevail.
- 1.7. The Client may not transfer the rights arising for him/it from this agreement without the prior written permission of the Contractor. This provision will be deemed to be a clause with effect under property law, as referred to in Book 3, Section 83(2), of the Dutch Civil Code (*Burgerlijk Wetboek (BW)*).
- 1.8. An agreement will only apply to the parties to the said agreement. A third party – directly or indirectly affiliated to the Client – will not be able to enforce any claim against the Contractor under the agreement.
- 1.9. Should an agreement be entered into by e-mail or another electronic means of communication, the said e-mail or other electronic means of communication will have the same legal validity as a written declaration.
- 1.10. These General Terms and Conditions have been prepared in the Dutch and English languages. In the event of differences in (the interpretation of) the text, the Dutch text will prevail.

## Article 2 - Quotations:

- 2.1. All offers and quotations will be free of obligation, even if a period for acceptance is stipulated in the offer. The Supplier will have the right to withdraw a non-binding offer within five (5) working days of the date on which it is accepted. All prices stated will be in euro (€). The Supplier will have the right to rectify any printing and/or typing errors and any other mistakes in communication.
- 2.2. All offers and quotations will be based on performance of the agreement by the Contractor under normal conditions, on the basis of information known to the Contractor and during the working hours customary, except where specified otherwise in writing.
- 2.3. If an offer to conclude an agreement does not ultimately lead to a definitive agreement, the Contractor is at all time entitled to charge all costs incurred by the Contractor to make the offer to the Client.
- 2.4. The Contractor has the right to refuse the conclusion of an agreement with regard to a Patient offered to him for treatment and/or to accept the Patient only under certain conditions, if the Contractor is of the opinion that treatment of the Patient has no, or has absolutely insufficient, chance of success, unless the Contractor is obliged on the basis of legal and/or

behavioural/disciplinary legislation to treat the Patient offered.

### **Article 3 - Agreement and formation:**

- 3.1. The agreement will be formed when the Contractor has accepted the order in writing by means of a confirmation (hereinafter: "**Order Confirmation**"). The Client will be required to check the Order Confirmation immediately and without delay. The agreement will be deemed to have been entered into and substantiated in full by the Order Confirmation issued by the Contractor, except where the Client has notified the Contractor of his/its reasoned objections in writing within 48 hours of the time at which the Order Confirmation was sent. Additional agreements and/or changes, by either of the two parties, will only be binding if confirmed in writing by the Contractor.
- 3.2. Each offer or undertaking made by a representative of the Contractor will only be binding if the latter has confirmed the said offer or undertaking in writing.
- 3.3. Verbal agreements will not bind the Contractor until the Contractor confirms them in writing.
- 3.4. If the Contractor has required additional payment security, agreements will only be formed once the Contractor has received an advance payment or partial advance payment and/or once credit insurance cover and/or a bank guarantee has been obtained.

### **Article 4 – Content of the agreement:**

- 4.1. The agreement concluded between the Contractor and the Client is not an obligation of result and only lead to an obligation of best efforts of the part of the Contractor to provide (veterinary) treatment and/or advice and/or and in the context thereof the medicaments to be supplied and/or to be administered.
- 4.2. The Contractor carries out the activities referred to in Article 4.1 to the best of his ability and with the care that may be expected of him.
- 4.3. The Contractor has the right to use the services of third parties when executing the agreement.
- 4.4. The agreement may also include the delivery of veterinary medicines and/or the administration of veterinary medicines and/or other products, insofar as permitted by law and with due observance of the provisions below in Article 4.5, by the Client himself, whether or not commissioned by third parties, including administration of behalf government agencies.
- 4.5. The mere fact that the Contractor is involved in the sale, supply and/or administration of veterinary medicines and/or other products and/or provides assistance in this regard, does not relieve the Client and/or third parties of the responsibility of the Client and/or the relevant third party with regard to the Patient by virtue of the legislation and regulations in the context of the administration and provision of veterinary medicinal products, including the administrative obligations.

### **Article 5 – Price:**

- 5.1. Except where agreed otherwise in writing, the price specified will be a net price, excluding turnover tax, service charges and other government levies and/or the costs of third parties that are payable in relation to the sale and/or supply and/or performance of the agreement. Except where agreed otherwise in writing, the price will be based on delivery from the Contractor's business location.
- 5.2. If the basis of the calculation made by the Supplier changes after the date of the Order Confirmation, but before delivery is effected, as the result of any change to one or more of the cost-determining factors, such as the price of raw materials, auxiliary materials, wage costs, freight charges, import duties, the value of the currency, or as the result of any other circumstances, all of the aforementioned solely at the discretion of the Supplier, the Supplier will be entitled to increase the price agreed.
- 5.3. The prices stated in quotations and offers are target prices. The activities are calculated and invoiced on the basis of subsequent costing.
- 5.4. If a fixed price has been agreed, the Contractor reserves the right to declare unforeseen (extra) activities to the Client, calculated on the basis of subsequent calculation, if these activities have become necessary as a result of circumstances that are reasonably for the account of the Client.

### **Article 6 - Payment:**

- 6.1. If other terms of payment have not been agreed in writing, payment will be effected within fourteen (14) days of the invoice date, without the deduction of any discount or bank costs and in the currency specified. Payment will only be deemed to have been effected once the amount due has been credited irrevocably to the bank account of the Contractor.
- 6.2. The Client will waive the right to offset a debt due to the Contractor against a claim the Client has against the Contractor.
- 6.3. The Client will waive the right to suspend performance of any obligation ensuing from this agreement.
- 6.4. If the Client fails to pay any amount outstanding to the Contractor, the Contractor will have the right to suspend further performance of all current agreements between the Contractor and the Client until the said payment has been effected, while a cash payment in advance may be demanded for further supplies, even if agreed otherwise. The aforementioned will also apply should an outstanding payment be disputed. If the non-payment of the Client is found to be justified at a later date, the Contractor will never be liable for compensation. Any reasoned objections to an invoice will be submitted to the Contractor in writing within eight (8) days of the invoice date; if no objection is made, or is not made on time, the invoice will be deemed to have been accepted.
- 6.5. If the term of payment agreed between the parties is not met, the Client will be in default by operation of law and will be required to pay commercial interest as of the date on which the default commences (as

- referred to in Book 6, Section 119a, of the Dutch Civil Code).
- 6.6. The Client will bear all costs, both judicial and extrajudicial, that are incurred in relation to the collection of amounts due from the Client and not paid on time. Extrajudicial costs will be calculated in accordance with the Decree of 27 March 2012, containing rules standardising the compensation of extrajudicial collection charges (Extrajudicial Collection Costs (Fees) Decree (*Besluit vergoeding voor buitengerechtelijke incassokosten*)).
  - 6.7. Payments made by the Client will always serve to settle all interest, costs and penalties due and, thereafter, to settle those claims arising from agreements that have been outstanding longest, even if the Client states that a payment pertains to a different claim.
  - 6.8. In the event of the winding up, liquidation or insolvency of the Client or the filing of a petition for his/its bankruptcy or winding up, the claims that the Supplier has against him/it, for whatever reason, will become due and payable immediately.
  - 6.9. The Contractor will always have the right to require security from the Client for the fulfilment of all of the obligations ensuing for the Client from the agreement, which the Contractor will have the right to do when or after entering into the agreement and before proceeding to perform or continuing to perform the agreement. If the Client fails to comply with the request to provide security, the Contractor will have the right, without prejudice to its other rights, to terminate all or part of the agreement without notice of default or judicial intervention, or to immediately suspend (further) performance of the agreement, without prejudice to its right to the compensation of the losses it has sustained. Moreover, all that which is due from the Client to the Contractor for whatever reason will be due and payable immediately.

#### **Article 7 – Delivery:**

- 7.1. The delivery period specified or agreed will be approximate and will never be regarded as a strict deadline. By the mere expiry of the terms, the Contractor will not be in default and the Client cannot proceed to terminate the agreement. In that case, a prior, proper and written notice of default is required, which includes a minimum term of 30 working days. Nor will the Customer be entitled to any compensation for any fines or losses incurred.
- 7.2. Except where agreed otherwise in writing, delivery or performance of the agreement takes place at the business location of the Contractor.
- 7.3. If the treatment of the Patient gives cause to do so, the Contractor has the right to deny anyone, including the Client if necessary, access to the stables or another location where the treatment takes place and/or to impose other conditions which he considers necessary for the treatment. Client is obliged to comply with this.
- 7.4. The risk of the goods to be delivered transfers to the Client at the time when the Contractor offers the goods for delivery.

- 7.5. Except where agreed otherwise in writing, delivery will be effected at the times that the Supplier has specified, which times it will specify promptly and, if possible, in consultation with the Customer. The Customer will be subject to a purchase and collection commitment.
- 7.6. If the Client fails to take delivery of the goods at the time determined, the Client will be in default and the Contractor will be able to respond as follows, at its own discretion: (i) terminate the agreement; (ii) send the goods to the Client at the risk and expense of the Client; (iii) store the goods at the risk and expense of the Client. The Client will bear all costs ensuing from the situations set out above, including the cost of storage and any loss of profit. The aforementioned will apply without prejudice to the other rights vested in the Contractor.
- 7.7. The Contractor will reserve the right to make changes to the composition of the goods to be supplied by it, if it is forced to do so further to changes to legislation and/or regulations and suchlike.

#### **Article 8 – Title:**

- 8.1. In each case, the supply of goods by the Contractor will be effected subject to the suspensive condition that all existing and future claims that the Contractor has against the Client by virtue of an agreement that has been entered into, or further agreements, have been paid in full. However, the retention of title will not apply in relation to claims other than the following:
  - a. claims relating to considerations for goods delivered or still to be delivered to the Client by the Contractor, or work carried out or to be carried out by the Contractor for the Client, and/or,
  - b. claims arising from the failure to fulfil obligations ensuing from the agreements referred to under a, including claims for the compensation and payment of extrajudicial and judicial costs, contractual and statutory interest, penalties and periodic penalty payments.
- 8.2. Until the suspensive condition referred to in Article 8.1. has been met the Client will not have the right to sell the goods bought subject to retention of title, give all or some of the actual control over the said goods to one or more third parties, or to enter into a legal act that obliges it to give all or some of the said actual control over the said goods to one or more third parties.
- 8.3. The Contractor will have the right to transfer the retention of title and the attached rights and obligations to one or more third parties.
- 8.4. Should the Client create or instruct the creation of new goods from one or more goods supplied or still to be supplied by the Contractor, the said new goods have or will have been created for the Contractor.

#### **Article 9 – The patient's stay:**

- 9.1. The delivery and the pickup of the Patient at the Contractor's business location is entirely at the Client's own expense and risk.

- 9.2. The Patient stays with the Contractor at the expense and risk of the Client, including the well-being and health of the Patient as well as its fruit.
- 9.3. Without prejudice to the provisions elsewhere in these general terms and conditions, the Contractor is not liable for damage, loss, claims from third parties, fines and/or costs associated with the storage and/or preservation as well as the transport of embryos and other fruits of the Patient, which belong to the Client, unless the Client proves that the damage, loss, claims from third parties, fines and/or costs are caused by an intentional act or the gross negligence on the part of the Contractor or the Veterinary Practitioner.

**Article 9 – Force majeure:**

- 9.1. In addition to the provisions of Book 6, Section 75, of the Dutch Civil Code, if the Contractor fails to fulfil any obligation it has vis-à-vis the Client, it will not be possible to attribute the said failure to the Contractor in the event of circumstances beyond the control of the Contractor that render it unable to fulfil all or some of its obligations vis-à-vis the Client, or because of which fulfilment of the said obligations by the Contractor cannot reasonably be required of the Contractor. Circumstances of this nature will include the following in any event: an imputable failure on the part of suppliers or other third parties on which the Supplier is dependant in the context of the performance of the agreement, a lack of raw materials, transport problems, war, riots, sabotage, flooding, loss, damage and/or delays during and as a result of transport, extreme sickness absenteeism and wildcat strikes by employees, customs actions and/or measures, the (temporary) closure of certain geographic areas, a failed or disappointing harvest, fire and other serious disturbances in the company of the Contractor, or in the companies of its suppliers, national disasters, epidemics and/or pandemics.
- 9.2. If a situation arises as referred to in Article 9.1., as a result of which the Contractor is unable to fulfil the obligations it has towards the Client, the said obligations will be suspended for the duration of the period in which the Contractor is unable to fulfil its obligations. If the situation referred to in the previous sentence has continued for a period of thirty (30) calendar days, both parties will have the right to terminate all or part of the agreement in writing. In this situation, the Contractor will not be obliged to compensate any damage and/or loss, even if the Contractor benefits from the force majeure situation.
- 9.3. If the Contractor has already partially fulfilled, or will be able to fulfil, the obligations ensuing for it from the agreement, when the force majeure situation arises, the Contractor will be entitled to invoice the obligations already fulfilled, or to be fulfilled, separately. The Client will be obliged to pay the aforementioned invoice as if a separate agreement were the case.

**Article 10 - Liability:**

- 10.1. The liability of the Contractor for direct damage or loss will be limited. Any liability of the Contractor for

indirect damage or loss will be excluded. The term "indirect damage or loss" will be understood to include – but not be limited to: consequential loss, intangible loss, trading and business interruption losses, loss of profit or environmental damage, or damage as the result of liability to third parties.

- 10.2. Any liability (for direct and/or indirect damage or loss) – regardless of the basis of the liability – on the part of the Contractor will be limited to the amount paid out as appropriate by the liability insurer of the Contractor, minus the excess to be paid by the Contractor. If no payment is effected under the liability insurance of the Contractor – regardless of the reason for the non-payment – the liability of the Contractor will be limited to the net invoice value charged by the Contractor to the Client for a period of three (3) months prior to the date on which the liability arises, which net invoice value the Client paid promptly, on the understanding that the liability of the Contractor will never exceed an amount of EUR 25,000.00 (in words: twenty five thousand euros) per incident or series of connected incidents.
- 10.3. The Contractor will not be excluded from liability for any damage or loss that is the result of intent or deliberate recklessness on the part of the Supplier or its management employees.
- 10.4. Claims that the Client has against the Contractor, either by virtue of a failure in performance, or by virtue of a wrongful and/or unlawful act, or on any other ground will lapse following the expiry of a period of one (1) year after the date on which the Client became, or could reasonably have become, aware of the existence of the said claims and the Client fails to bring the claims in question before the court within the said period of one (1) year.
- 10.5. The conclusion of an agreement and/or the performance of veterinary treatment and/or in the context thereof the delivery and/or administration of medicaments and/or the provision of veterinary advice and services, does not affect the risk liability of the Client and/or third parties for the damages caused by the Patient as referred to in Book 6, section 179, of the Dutch Civil Code (*Burgerlijk Wetboek (BW)*).

**Article 11 - Indemnification:**

- 11.1. The Client will indemnify the Contractor against any claims from third parties for damage or losses that are sustained by third parties in connection with goods supplied by the Client to the said third party, into which goods the goods of the Contractor have been incorporated, except where it is established by law that the said claims are the direct result of an intentional act or gross negligence on the part of the Contractor and the Client also demonstrates that he/it is in no way to blame in this respect.

**Article 12 –Interim termination agreement:**

- 12.1. The agreement is terminated prematurely by:
1. the death of the Patient;
  2. a unilateral decision by the Contractor, if the Contractor is of the opinion that it cannot reasonably be demanded of him that the

(veterinary) treatment will be continued because there is no (more) reasonable chance of an intended and/or desired result;

3. a unilateral decision by the Contractor if the trust between the Contractor and the Client has been seriously disturbed.

- 12.2. If an agreement is terminated prematurely, the costs incurred and the agreed compensation will be charged to the Client in proportion to the work already performed, unless it concerns indivisible work, at the discretion of the Contractor.

#### **Article 13 – End of the agreement:**

- 13.1. Without prejudice to that which is arranged elsewhere in these general terms and conditions, the Contractor will be entitled to terminate the agreement with the Client – and all agreements connected with the said agreement – with immediate effect, without a prior notice of default being required, in the following situations:

- a. an attachment before judgment or attachment in execution is levied against the Client and this attachment has not been lifted within thirty (30) days;
- b. in the event of the winding up or liquidation of the Client, the filing of a petition for his/its winding up or liquidation, if a (provisional) moratorium or the application of a debt restructuring arrangement apply on the part of the Client, if the Client is dissolved, or the Client submits a composition with creditors (or if similar circumstances and legal facts are the case under applicable foreign legal systems);
- c. the cessation or actual termination of the business operations of the Client;
- d. there are reasons to assume that the Client will fail in his/its performance of the obligations ensuing for him/it under the agreement (and/or associated agreements);
- e. the Client is in default, having failed to fulfil the obligations ensuing for him/it under the agreement (and/or associated agreements);
- f. a change of control takes place in the company operated by the Client, which change of control will be understood to mean: the transfer of the majority of the shares in the capital of the company or a situation in which actual control of the Client comes to be vested in one or more third parties under an agreement.

- 13.2. Termination of the agreement will not affect the pre-existing rights of the Contractor, including the right to claim compensation. Nor will it affect those provisions of the agreement or these general terms and conditions that are, by their purport, intended to remain in force once the agreement has been terminated.

- 13.3. If the agreement is terminated, the Contractor will not be liable for any loss sustained by the Client as a result. Liability will be limited in accordance with the provisions of Article 10 at all times.

#### **Artikel 14 – Exceptional provisions:**

- 14.1. If the treatment of the Patient gives cause to do so, the Contractor has the right to deny anyone, including the Client if necessary, access to the stables or another location where the treatment takes place and/or to impose other conditions which he considers necessary for the treatment. Client is obliged to comply with this.

#### **Article 15 – Other provisions, choice of law and forum:**

- 15.1. If one or more provisions of these general terms and conditions is or are found to be invalid, or are rendered inoperative by a court, the other provisions will remain in full force.
- 15.2. These general terms and conditions, all offers and quotations issued by the Contractor and also all agreements between the Client and the Contractor will be governed exclusively by Dutch law.
- 15.3. All disputes between the parties, ensuing from or otherwise relating to quotations, offers, these general terms and conditions and/or agreements, by whatever name, will be submitted to the district court in the Netherlands (in the court district of East Brabant) to the exclusion of any other court. Claims in preliminary relief proceedings will be submitted to the judge in preliminary relief proceedings of the district court of East Brabant.

#### **ANNEX 1**

**In this Annex 1 the definitions 'Contractor/we' and 'Client/he/it' as used in the general sales and delivery conditions are mentioned as 'uns/wir' respectively 'Abnehmer/sie'.**

**Contrary to article 8 (Title) the following applies to German clients (clients with their registered office in the Federal Republic of Germany):**

#### **Eigentumsvorbehalt**

1. Das Eigentum an den gelieferten Waren bleibt zur Sicherung aller Ansprüche vorbehalten, die uns aus der gegenwärtigen und künftigen Geschäftsverbindung bis zum Ausgleich aller Salden gegen den Abnehmer und seine Konzerngesellschaften zustehen. Unser Eigentum erstreckt sich auf die durch Verarbeitung der Vorbehaltsware entstehende neue Sache. Der Abnehmer stellt die neue Sache unter Ausschluss des eigenen Eigentumserwerbs für uns her und verwahrt sie für uns. Hieraus erwachsen ihm keine Ansprüche gegen uns.
2. Vorbehaltsware mit Ware anderer Lieferanten, deren Eigentumsrechte sich ebenfalls an der neuen Sache fortsetzen, erwerben wir zusammen mit diesen Lieferanten –unter Ausschluss eines Miteigentumserwerbs des Abnehmers –Miteigentum an der neuen Sache, wobei unser Miteigentumsanteil dem Verhältnis des Rechnungswertes unserer Vorbehaltsware zu dem Gesamtrechnungswert aller mitverarbeiteten Vorbehaltswaren.
3. Der Abnehmer tritt bereits jetzt seine Forderungen aus der Verausserung von Vorbehaltsware aus

unseren gegenwärtigen und künftigen Warenlieferungen mit sämtlichen Nebenrechten im Umfang unseres Eigentumsanteils zur Sicherung an uns ab.

4. Bei Verarbeitung im Rahmen eines Werksvertrages wird die Werklohnforderung in Höhe des anteiligen Betrages unserer Rechnung für die mitverarbeitete Vorbehaltsware schon jetzt an uns abgetreten. Solange der Abnehmer seinen Verpflichtungen aus der Geschäftsverbindung an uns ordnungsgemäß nachkommt, darf er über die in unserem Eigentum stehende Ware im ordentlichen Geschäftsgang verfügen und die an uns abgetretenen Forderungen selbst einziehen.
5. Bei Zahlungsverzug oder begründeten Zweifeln an der Zahlungsfähigkeit oder Kreditwürdigkeit des Abnehmers sind wir berechtigt, die abgetretenen Forderungen einzuziehen und die Vorbehaltsware zurückzunehmen.
6. Scheck-/ Wechselzahlungen gelten erst nach Einlösung der Wechsel durch den Abnehmer als Erfüllung.
7. Hinsichtlich der Vereinbarung von Eigentumsvorbehaltsrechten gilt ausschließlich deutsches Recht.